Ombudsman

Fairness for all in British Columbia

1986 Annual Report

To the Legislative Assembly

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May, 1987

The Honourable John Reynolds
Speaker of the Legislative Assembly
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Dear Mr. Speaker:

It is my pleasure to present the 1986 Report to the Legislative Assembly in accordance with Section 30(1) of the Ombudsman Act.

This Annual Report covers the period January 1 to December 31, 1986. I took office effective September 1, 1986. The work referred to in this Report reflects the terms of my two predecessors as well as my own brief start. However, I take responsibility for all editorial comment.

In presenting my first Annual Report, I would like to pay tribute to B.C.'s first Ombudsman, Dr. Karl Friedmann, and to Acting Ombudsman, Peter Bazowski. Dr. Friedmann established an efficient, principled office and enforced its full remedial jurisdiction to the enduring benefit of British Columbians. Peter Bazowski maintained the operation for a period of 15 months, passing to me the advantages of sound financial management, a dedicated and effective staff, and the respect of the public authorities with which the office deals.

Perhaps because of the term "Ombudsman", the impression is sometimes left that this office operates under the force of one person. Nothing could be less true. The office operates as a professional unit composed of highly motivated and skilled individuals. The people of British Columbia and our public service are honourably served by them and it is my privilege to work with them.

Finally, I would like to commend the positive attitude of the provincial public service to the work of the Ombudsman's office. This leads to the fair resolution of the large majority of complaints investigated by the office.

As an officer of the Legislative Assembly, I would be pleased to appear and report further on these matters, at the convenience of the Members.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudsman

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Highlights of the 1986 Annual Report

- Individual members of the public brought 11,012 concerns to the Ombudsman's office in 1986.
- The Ombudsman's office concluded 3,500 full investigations in 1986, of which:
  - 60 per cent were resolved to the complainant's satisfaction,
  - 39 per cent were found to be not substantiated,
  - less than one per cent remained otherwise unresolved.

  Thirty-five per cent of jurisdictional complaints are referred to existing administrative appeal systems for attempted resolution.
- The Ombudsman's office has initiated a systems approach to address situations of recurring unfairness in public administration. Fairness audits are in progress regarding:
  - the workers' compensation appeal system,
  - B.C. Hydro collections policies,
  - criminal record checks of people working with children, and
  - liquor licensing policy.

  Others are to follow. This preventive action supplements the office's role of responding after the fact to individual complaints of administrative unfairness.

The investigation of individual complaints can result in significant changes in policy or administrative practice which benefit not only the complainant but individuals who subsequently have dealings with the public authority. Some noteworthy examples are highlighted here and are detailed more fully elsewhere in the report.

- Clearer policies regarding the seizure and sale of property by a sheriff were set after a man's possessions were seized and sold in his absence. He was subsequently compensated. CS86-4, page 23.
- Court Services adopted a policy that would ensure handicapped people would get required assistance to reach courtrooms. CS86-9, page 25.
- The Corrections Branch adopted a policy to use vehicles with no identifying decals to transport youths to community events, to help preserve their anonymity and dignity. CS86-35, page 35. The Ministry of Health adopted a similar policy regarding residents of The Maples Adolescent Treatment Centre. CS86-77, page 51.
- A correctional centre revised its system for handling letters after it was found the mail of one inmate had been mishandled.CS86-33, page 35.
- The Attorney General's Ministry agreed to pay damages to a former resident of the Forensic Psychiatric Institute for mental suffering he experienced after he was treated roughly by a staff member.CS86-78, page 51.
- The right of adolescents to appeal cessation of income assistance benefits was affirmed by the Ministry of Human Resources and policy was amended to ensure they were treated the same as adults. CS86-85, page 55.
- The Ministry of Human Resources standardized its method of calculating the reduction of UIC benefits when unemployment insurance benefits are also being received, basing it on actual UI benefits received, rather than averaging. CS86-93, page 56.
- The Ministry of Human Resources agreed to restudy a case where parents had been refused an adoption on the basis of negative information, the truth of which the couple had not had a chance to challenge. CS86-97, page 57.
- The Ministry of Labour agreed to seek an amendment of the Employment Standards Act which would allow some flexibility on the deadline for filing complaints. CS86-121, page 62.
- The Ministry of Transportation and Highways and B.C. Transit, have altered practices in their negotiations for land to adhere more closely to principles of fairness. CS86-125, page 64, CS86-139, page 70.
- A college adopted new tendering practices after a man complained about the bidding on janitorial contracts and was threatened with legal action when he first complained to the college. CS86-128, page 66.
- The Motor Vehicle Branch adopted a new policy which allows the use of translators in taking written licence examinations. CS86-144, page 72.

- After a man complained of inadequate notice about the sale of a building he had wanted to buy, B.C. Building Corporation altered its tendering procedures to equalize the bidding opportunity for everyone. CS86-151, page 76.
- A gap in the approval process had resulted in a homeowner building a garage over a gas line contrary to Gas Safety Act regulations. Municipalities were informed and advised us they would cross-check building plans in the future with B.C.Hydro. CS86-154, page 78.
- After an unexplained delay in paying a claim, ICBC agreed to pay a man transportation expenses and interest on an outstanding car loan during the delay period of some four months. CS86-170, page 83.
- ICBC agreed to review the legal question of who is responsible for unsatisfactory repair work, or more particularly, who contracts for repair work, ICBC or the claimant. CS86-172, page 84.
- The Workers' Compensation Board agreed to reassess a worker's loss of earnings when sufficient doubt was cast on a former assessment of his ability to perform his former job. The decision resulted in an retroactive award of approximately $34,000. CS86-177, page 87
- The WCB agreed to a Medical Review Panel finding that the back problems and headaches a woman experienced were related to an accident 10 years before and paid the woman about $30,000 and a pension. CS86-178, page 88.
- The Ombudsman's office helped the WCB and the Ministry of Human Resources coordinate their policies regarding 'assignments' of WCB payments, which the Ministry may require income assistance recipients to sign to repay benefits during periods when the two overlap. CS86-182, page 89.
- The WCB reconsidered cutting off a worker's benefits when the circumstances surrounding late medical reports were explained and, furthermore, the Board put a special rush on payment of six weeks wage loss when it was told the man needed the money to avoid a tax forfeiture of his home. CS86-186, page 91.
- The provincial government agreed to pay for losses due to a fire after the Ministry of Human Resources agreed to pay an income assistance recipient's insurance coverage but, through oversight, failed to mail the insurance company a cheque. Page 19.
- The WCB agreed to review its policy regarding which injuries arise 'out of and in the course of employment' and are consequently compensable. In the meantime, it agreed to compensate a woman's injury. CS86-191, page 94.
- After a man incurred legal costs in a dispute with the WCB where an adjudicator had clearly contravened Board policy, the WCB finally agreed that, in appropriate circumstances, it would repay those legal costs. CS86-200, page 97.
- The Ombudsman's office coordinated the activities of the Corrections Branch and the Ministry of Human Resources to create a release plan for a cooperative young offender in order to protect him from former co-defendants. CS86-40, page 36.
- Missing personal effects were restored in several situations involving both adult and young offenders. In some cases where the goods could not be located, settlements were negotiated. CS86-28, page 33, CS86-30, page 34.

Part I
Introduction

The Ombudsman Office and the Democratic Process

The widespread and increasing incidence of Ombudsman Offices in western democracies is a recent phenomenon which parallels the massive expansion of public involvement in personal affairs which has occurred since the second world war.

This section of the report first attempts to assess the need for such an office by examining the difficulties which can constrain government from responding effectively to individual concerns in a modern parliamentary democracy. Second, it examines the Ombudsman's office as an agent for government accountability and suggests specific approaches for achieving the fundamental objectives of the office: to identify unfairness and stimulate change. Finally, it describes current initiatives which demonstrate this approach.

A. Need for an Ombudsman Office

1. Democratic Dilemma

Modern societies are complex and diverse. Their governments are expected to satisfy ever increasing demands for public services and are required to involve themselves fundamentally in the planning and coordination of private activities. The public sector in western democracies substantially exceeds the private sector in size and influence. This invited intrusion involves huge agencies of government which experience difficulty in remaining directly accountable to the public. However, accountability is the essence of democracy and stands as a necessary condition to individual fairness in society. The democratic dilemma is therefore to achieve broad public objectives for the general good while remaining sensitive to the potentially negative impact on individuals and minorities.

The complexity of our society requires the massive delegation of decision-making from individual citizen and communities to elected representatives, cabinet, government ministries and independent public institutions. Decision making becomes less reviewable and less responsive. The application of public policy to individual situations requires the exercise of broad discretion and this can lead to arbitrary results; paternalism can overshadow accountability as a motivating bureaucratic force.

Bureaucratic insensitivity and the attendant unfairness and error are not motivated by ill will or incompetence. Rather, they are fostered by the overwhelming responsibility assumed by modern government and the size of the institutional machinery required to discharge it.

Without the ability directly to hold government to account, the impact of its imposing presence on individual members of society is numbing. Democratic impotence can cause indifference or disaffection. The former can lead to apathetic reliance on simplistic distinctions, the latter to calls for radical change. Both threaten the stability of our system of government.

The challenge for the public and the public service is not necessarily to achieve less government, for there is no indication that we want to be provided with less services. The answer lies in providing better government by making it more directly responsible to each of us as individuals, as well as responsive to broad public policy needs.

2. Accountability

(a) Internal Accountability Systems

Modern government has introduced elaborate internal accountability systems to control decision-making and spending in the public service. These are necessary but not sufficient to satisfy the public's need for accountability from government.

First, they are not neutral. They measure compliance with centrally imposed directives which can cause interference from organizational and political goals. Second, due to the sheer size of government, they tend to reward conformity with general policy rather than effectiveness in individual cases. Finally, they tend to be quantitative rather than qualitative measures.

Qualitative concerns in the public sector are generally considered to be part of the political process. However, as is discussed below, this can be inadequate for modern government. Quantitative measures such as cost benefit and productivity may be sufficient technical guides in the private sector where the market forces provide the qualitative dimension. However, the provision of essential services by public monopolies does not provide for this acid test. While internal program evaluation can provide some measure of quality control, it lacks the objectivity of direct public involvement. Therefore, what are needed are effective mechanisms to hold government to account for the quality of its services, and these must be external to government itself to be accepted as legitimate.

(b) External Accountability Systems

External accountability systems in our democratic process are numerous and varied. They include political processes such as elections, interventions by elected representatives, legislative debates and ministerial responsibility; judicial processes through the courts and administrative tribunals; public disclosure through a free news media and freedom of information legislation; and community awareness and participation in public decision-making and service delivery. The list also includes the Ombudsman's office. The effectiveness of any one of these systems in holding government to account relates to its ability to identify unfairness and stimulate change for the better. Criteria against which to measure such effectiveness are independence, timeliness, confidentiality, cost, accessibility to the public, access to government information, finality, expertise and influence. A review of each of these systems against these criteria demonstrates the potential relative effectiveness of the Ombudsman's office as an accountability mechanism.

Elections

Elections are the fundamental expression of our democratic rights. However, they are not sufficient in themselves to hold modern government to account.

The intermittent selection among candidates and parties does not provide for an adequate expression of preference among the multitude of complex and important public issues on which decisions must be taken. The public frustration with this substantive inadequacy may account for the simplistic labelling of politicians on a left to right spectrum and the overemphasis on matters of style.

The absence of proportional representation and an effective division of powers between the legislative and executive branches in our parliamentary system could threaten to disenfranchise minorities and even small majorities in a diverse society. Even the perception of this possibility can lead to the undemocratic polarization of our political affairs. Although the Charter of Fundamental Rights and Freedoms can provide protection to individuals and minorities against legislated unfairness, it is not absolute and can be overridden by specific legislation.

MLAs and the Legislature

Individual MLAs are the major voice of their respective constituents' concerns to government. Through them the legislature truly represents the people of the province. However, there are limits on their ability to hold government accountable for unfairness to individuals.

Whether an MLA is a member of the government or opposition, there may be an absence of at least the appearance of neutrality on any given issue. Individual MLAs are limited in the time and resources they have available to them to research any particular complaint, and may not have ready access to the information or expertise required to solve it.

The legislature is not well suited to deal effectively with individual complaints. Rather, its limited time of sitting is dominated by matters of great complexity and wide application. Even if time was available for questioning or debating a particular concern, it would necessarily become a matter of public record, which might not be in the interest of the concerned individual.

In addition, a great deal of public decision-making and other administration is conducted by "independent" boards, commissions and corporations. While they may be appointed or created by government, they are often not directly answerable to it. Although this situation may depoliticize their actions and decisions, it may also insulate them from being accountable to the political process.

Judicial Process

The courts have the responsibility to enforce the legal rights of individual members of the public against the actions of government. As such, they operate to hold the government accountable for its actions. However, there are several factors which limit their effectiveness in doing so.

Where legal rights do exist against government action, the general barriers to access to justice through the courts of cost and delay are exacerbated by a private litigant having to face the virtually unlimited resources of government. In addition, legal rights which might be enforced against individuals may be limited or may not exist against government due to various crown immunities and privileges and the judicial deference to the sanctity of executive decisions. Recourse through the courts is also a public exercise which may offend the preferred privacy of an individual complainant.

Recourse is frequently possible for an individual directly to administrative tribunals exercising quasi-judicial functions, or through judicial review of their process. However, accountability of government through such processes may be limited: by privative clauses restricting judicial review; by the absence of real independence of some such bodies; by delays in receiving hearings and decisions; by the lack of representation at such hearings; and by the absence of certainty otherwise provided through a system of binding precedent. Further, there is often no rational distinction between the type of decision made by such a tribunal and that made as a matter of pure administrative function, which may not be reviewable at all.

Public Disclosure

Freedom of the news media is fundamental under the Canadian Charter of Rights and Freedoms and is an essential element of our democratic system. However, its effectiveness as an accountability mechanism is limited by several factors.

First, it must be realized that much of the news media has both commercial and public interests and these are not always identical. In certain circumstances, the interest in exciting the public may take precedence over and even be in conflict with the interest in informing the public. When this happens, the media's value as an accountability system is diminished.

Related to the news media's ability to inform the public is its and the public's access to information about the actions of government. Although we have federal freedom of information legislation, its effectiveness is limited by the exceptions to what information will be divulged. In B.C. we have no similar legislation regarding provincial government actions.

Individual & Community Participation

Democracy works best when each member of society takes personal responsibility for the actions of the whole. This is achieved by individuals becoming informed about and participating in decision-making and service delivery at the local level. Such involvement ensures that the decisions and services are relevant and responsive to community needs.

However, given the extensive demands on government for services, the scope and complexity of its responsibilities stimulate centralist and interventionist tendencies, regardless of the political idealogy of the government of the day. These tendencies can limit the effectiveness of local participation in holding central government to account.

3. Potential Role of the Ombudsman's Office

The more traditional accountability systems noted above fail individually and in combination to meet all of the criteria for holding government effectively to account on behalf of individual members of the public. The *Ombudsman Act* creates an office which has the potential to satisfy all of these criteria.

The office is independent of government and politically neutral, reporting directly to the Legislature as a whole. It is required to maintain as confidential the information disclosed to it so as to respect the privacy of individual citizens and the security of government information. The office is accessible to the public in all regions of the province through toll-free phone lines, and the service is free. Most complaints can be resolved quickly through the immediate access of the office to government information for which the *Ombudsman Act* provides, and through the skills and experience of the Ombudsman staff. The sharp focus of the Ombudsman's mandate on administrative fairness allows for critical analysis and authoritative recommendations for change. As such, the Ombudsman's office has the tools necessary to

hold government accountable to individual citizens through the application of fair practices which are compatible with its broad public policy objectives.

B. Strategies for Effective Change

1. Results

As a democratic accountability system, the Ombudsman's office has the primary objective of achieving fair treatment for individual members of society. These include both those who complain directly to the office and those who might have future cause to complain due to existing unfairness in government systems. This is a result oriented objective and the office must measure its approach to complaint resolution against the likelihood of achieving real systemic change and enduring results.

The objective of the Ombudsman's office is not to create news. This may be a powerful tool in a particular case, but it is also a dangerous one which must be applied with sensitivity and deliberation. To be sure, the public at large takes vicarious pleasure in seeing public officials and agencies criticized. Perhaps this acts as a catharsis of our frustration with having abdicated political power to apparently unaccountable institutions, and it is not necessarily a negative force. However, the Ombudsman's office must ensure that it controls the use of publicity towards its own objectives, and that its considerable statutory powers of investigation and exposure are not manipulated towards some more egotistical purpose.

If the Ombudsman's office resorts to public confrontation with government officials in order to effect change that is otherwise resisted, this represents a failure of its ability to achieve a reasoned settlement. It also carries great risk. News media attention is only fleeting as it works to satisfy a public demand for new stimulation. Interest, regardless of how intense at a given time, moves on quickly to other issues and the impact of the Ombudsman's revelation fades in the public mind. However, the impact on the public officials that are targeted endures, and if the dominant reaction is negative, be it humiliation, betrayal or otherwise, the ability of the Ombudsman's office to cause positive and permanent change in institutional behaviour towards individuals can be seriously crippled.

However, to achieve results, the Ombudsman's office must develop and maintain a strong public profile. This profile should stress the positive role of the office: how the public can gain access to it to obtain individual fairness; and how the public service can draw on its expertise to develop fair and effective government systems. While this may not make exciting headlines, the news media must be persuaded that it is an important message to carry.

Regarding accessibility, the strong indication is that the people of British Columbia know about the office and use it. British Columbia has the highest incidence of complaints against its public institutions of any province, and this comes uniformly from the different regions of the province. This volume seemed to peak in the 1983-1984 period and is at a similar level today, notwithstanding the differing levels of rhetoric or publicity surrounding the office's actions.

Regarding results, the office has always achieved a high resolution rate of the complaints received. This speaks well of the genuine interest in the public service to respond positively to fair criticism, and of the thorough and reasoned approach of the office. It would be tragic to risk this result through the mistaken belief that publicity in itself enhances the effectiveness of the office. However, it would also be naive not to realise that some intransigence and unfairness will inevitably arise and persist in large government institutions. Where this occurs, the Ombudsman office must speak out publicly and with force. The challenge is not to dilute the integrity and influence of these strong statements by resorting indiscriminately to publicity.

If, therefore, obtaining results for current and potential complainants is the key to the office's effectiveness, how can this best be accomplished? The office believes that it can play a major role in causing government institutions to become more systematically accountable, and therefore fairer to individual members of the public, through an investigation and recommendation process that earns the respect of the public and the public service, and which identifies the office as an expert resource in matters of administrative fairness.

2. Recommendation Process

The *Ombudsman Act* provides no power to order change. Rather, it provides the tools for the office to investigate fully any apparent unfairness arising from government action, and to make recommendations for change when such unfairness is established.

Perhaps paradoxically, this inability to force change

represents the central strength of the office and not its weakness. It requires that recommendations are based on thorough investigation of all facts, scrupulous consideration of all perspectives, and rigorous analysis of all issues. Through this application of reason, the results are infinitely more powerful than through the application of coercion. While a coercive process may cause reluctant change in a single decision or action, by definition it creates a loser who will be unlikely to embrace the recommendations in future actions. By contrast, where change results from a reasoning process, it changes a way of thinking and the result endures to the benefit of potential complainants in the future. However, if genuine change is to take place as a result of Ombudsman action, the office must earn and maintain the respect of the public and the public service.

3. Respect

It is not difficult for the Ombudsman's office to be liked or lauded by segments of our society; it is merely necessary to become identified with a particular cause or interest and to apply the force of the office to its ends. Although this may be a seductive and appropriate option for a political agency, it is wholly inappropriate for the Ombudsman's office. The office is mandated neither as a government critic nor as a government apologist. It is not established to be the advocate of every complainant that approaches it; it is the advocate of fairness and this is the only cause to which it must answer. Although discharging this responsibility may make the office unpopular with some segments of government or the public, it is the only way to earn the universal respect requisite to causing real change in public administration.

The public must respect the office in order to entrust its concerns to it and to accept the judgment of the office, whether it recommends change in or endorses government action. Central to earning this respect is the independence of the office from government, and this must be fiercely preserved and constantly exercised.

The public service must also respect the office if it is to find credible and implement its recommendations for change. This respect cannot be achieved unless the office demonstrates its neutrality in investigating and analysing public complaints. It is unrealistic to expect the public service to accept findings of unfairness from an office which is not perceived as unbiased in exercising its mandate.

Another element of gaining widespread respect for the Ombudsman's office is maintaining the focus of its work within its acknowledged field of expertise. The office is not and should not attempt to be expert in all areas of government activity. Public servants are hired and trained as experts in their respective fields and must generally be supported in the judgments they apply to their responsibilities. The Ombudsman's office is expert in issues of administrative fairness and should concentrate its efforts on bringing those principles to bear on the specialized work of the many government institutions over which it has jurisdiction.

Although the right of the Ombudsman to review the merits of administrative and quasi-judicial decisions has been confirmed by the courts, this authority must be used cautiously if the office is to remain credible. It is appropriate for the Ombudsman's office to recommend further enquiry or reconsideration or reversal of such decisions where the evidence patently contradicts it or where new evidence exists or is indicated to exist which would do so. However, recommending the substitution of the Ombudsman's opinion for that of the government experts merely on the grounds that, on balance, a different conclusion is reached on the same evidence, may well be irresponsible. It may have the effect of establishing the Ombudsman's office as a further level of appeal of the merits, which can reduce the certainty and finality of the process and add to the delay, which is a major element of unfairness in itself. Also, there is the danger that recommendations which go beyond the office's specific expertise will merely be discounted and may serve to discredit those recommendations which deal with vital issues of administrative fairness.

This does not mean that the Ombudsman should automatically or unthinkingly defer to the judgment of the administrator on the merits of decisions. In many cases the Ombudsman will be competent to reach a valid opinion on the correctness of decisions, including discretionary decisions. If he believes a decision is wrong, it is the Ombudsman's duty to point out the error and give his reasons. If, as a result, the administrator agrees with the Ombudsman, injustice can be corrected and administration improved. If no agreement can be reached, nothing is lost by having an informed and reasoned debate over the issue. The merits of decisions can be examined and the Ombudsman, the administrator and the complainant need thereby suffer no reduction of their respect for each other.

Finally, in order to maintain the requisite respect of the public and the public service to accomplish its mandate, the Ombudsman's office must keep its feet on the ground and avoid self-righteousness. Its job is merely to bring certain skills and statutory authority to bear on the potential unfairness that large public bureaucracies can cause to individuals as they administer broad public policy. It is not to be the final arbiter of right and wrong. In its work, the office is in the position to receive public complaints of unfair

treatment, it has the tools to investigate all relevant circumstances, and it has the skills to reach an expert conclusion as to whether unfairness has occurred. While it can legitimately speak with authority, the final decision must be left to public opinion and the political process. This can best be facilitated by placing unresolved Ombudsman reports before the Legislature, and through it before the public, for further consideration. This is not for the purpose of confrontation, but rather to encourage further discussion on important issues of fairness, and a political resolution of outstanding differences.

4. Resource

The Ombudsman's office must act as a constructive force in the provision of effective and fair public services. To do so, it must been seen and used as a resource by the public and the public service. The public must use it to hold government more directly to account for the impact it has on individuals; and the public service must draw on it for assistance in identifying and correcting existing and potential unfairness in its decisions, actions and practices.

The Ombudsman's office does not exist primarily to replace or oppose government decision-making. Rather, it exists to assist the public service to be more aware of and responsive to the public's individual needs.

(a) Systems Solutions

In addition to helping resolve individual complaints, the Ombudsman's office, over time, can assist government institutions to solve systemic unfairness by identifying recurring problems which may not display an obvious pattern to the agency itself. Once identified, the office can apply its focused expertise in administrative fairness and its broad experience with all areas of the public service to assist the authority to design and implement change in its public administration. Such assistance can relate to developing codes of conduct, structuring the exercise of discretion, and ensuring due process in internal appeal and complaint resolution systems. It can also deal with sensitive fairness issues which may be inappropriate for the collective bargaining process.

This systems approach is preventative and constructive, and not merely remedial and critical. To have a broad impact, the Ombudsman's office must be willing to come forth with its views and recommendations at a timely stage in government administrative policy development. While it must not involve itself in the political debate of broad public policy, the office should make known to the government its specific perspective on the fair administration of policy at a time when it can be incorporated most efficiently into the necessary administrative framework.

It need not unduly concern the office that it might later find fault with the practices it recommended. Such practices are evolutionary and must always adapt to new circumstances or insights. In fact, the Ombudsman's office is regularly involved with recommending change and, where implemented, later reviewing the fairness of its own recommendations.

An important criterion for success in the Ombudsman's office stimulating enduring change in public administration is the involvement of the institution in the process. While the Ombudsman's office must stand independent and distinct from any government agency, it should not expect to have a major impact on administrative practices by acting only as a remote critic. Rather, its expertise in fair process should be blended with the agency's experience in the field to produce the most effective result.

Involving the government agency is necessary in order to ensure relevancy and compatibility to its broad objectives. It also creates an internal ownership and commitment to the results, which is necessary to ensure that they are accepted and practised. Also, if the systems approach is going to effect real change, it is extremely important to have the support of senior management in the process.

The long term result of the Ombudsman's office involvement in systemic change should be internal ombudsman-type activities in all large public institutions. By internally having to face and resolve individual concerns on a daily basis, the institution would progressively become more accountable to the public and treat individuals more fairly. The result for the Ombudsman's office of such an internal complaint resolution system would be that it would refer individuals to it and monitor the process. Only if the complainant remained unsatisfied would the Ombudsman's office conduct its own investigation. The impact of the Ombudsman's office would be greatly amplified and our public institutions would become more accountable and democratic.

(b) Cross-Authority Issues

The wide scope of government responsibility can create overlaps and conflict in the mandates of various public institutions, with resulting inconsistency or unfairness to individual members of the public. The Ombudsman's office, as a sensor of public concern with the full range of government activity, can become a resource to the various institutions involved in a particular conflict. The office can act as a convener and mediator of the different interests and

can provide neutral advice on any fairness issues that are involved.

(b) Public Inquiry Commission

Another resource role that the Ombudsman's office can play regarding issues within its mandate and expertise is that of a public inquiry commission, as an alternative to a royal commission. The independence and neutrality of the office make its recommendations more likely to be acceptable to the various interests involved. The *Ombudsman Act* provides for all the necessary powers of inquiry, evidence gathering and public hearing that would be required. Because the office already exists and has the necessary legal and technical expertise, any costs of such a process would be marginal. Also, the office is able to focus in on specific areas of concern in a timely and efficient manner due to its base of experience with government administrative process. By contrast, royal commissions often lack the credibility of a neutrally appointed body and can be cumbersome, expensive and untimely.

Generally, the Ombudsman's office exists as an independent and neutral resource with specific expertise in matters of fair public administration. It is available for free, to be drawn upon by members of the public and the public service to enhance the accountability and effectiveness of government.

C. Current Initiatives

The office is currently operating at a high rate of activity and enthusiasm. In addition to investigating, resolving and reporting on hundreds of individual complaints each month, the staff are working in teams on a series of comprehensive studies designed to assist government authorities in responding more systematically to public concerns. Current initiatives include the following:

1. Office Structure

The Ombudsman's office has gone through substantial structural change to accommodate this additional activity. Specifically, there has been a shift in emphasis from administrative functions to case work and systems studies. This has involved the reassignment of 3-1/2 full-time positions as well as adjustments to most reporting relationships. In addition, the organizational structure has been significantly flattened to reflect better the professional role and high calibre of the Ombudsman officers.

The Vancouver office continues to specialize in Crown Corporation and Institutional work, and the Victoria office in dealing with the various individual Ministries. Given the equal size and importance of each office, it was thought inappropriate for one to be a branch office of the other. Therefore, they are now operating as equal halves of the same operation, with the Ombudsman spending approximately 1/2 his time in each. Joint task forces and training sessions are being planned to bind the offices more closely in order to ensure consistency of approach and the sharing of skills.

2. Accessibility

It is essential for the Ombudsman services to be equally available throughout the province. This has been achieved through access to the Vancouver and Victoria operations by toll-free telephone service, through which people throughout the province can express concerns and initiate an investigation. For complaints/inquiries concerning Crown Agencies such as Workers' Compensation Board, the Insurance Corporation of B.C. and B.C. Hydro, the number to call is 1-800-972-8972 (Vancouver office). For all other complaints/inquiries including Ministries of the government, the number to call is 1-800-742-6157 (Victoria office). Where necessary, on-sight investigation can also take place. Table 2 in the Statistics section demonstrates the effectiveness of this approach, with contact with the offices from the various regions shown to be in general proportion to the population of each region.

However, for the Ombudsman's office to be used responsibly by the public and to have a positive impact on the public service, it is necessary for the Ombudsman periodically to make direct contact with communities in all areas of the province. This is particularly important if the office is to be understood as more than the confrontational agency portrayed in province-wide news coverage of the occasional difficult case.

To achieve this, a series of regional visits is being arranged for the Ombudsman to spend a few days each month meeting with representatives of community groups, government managers, chambers of commerce and local news media; and hold evening clinics to hear the concerns of individual members of

the public. In this way, a more accurate profile of the Ombudsman's office can be presented, and the Ombudsman can get a clearer sense of different regional and geographic problems.

3. B.C. Hydro Study

In late 1986, as a result of discussions between the Ombudsman and the President of B.C. Hydro, the Ombudsman's office commenced a comprehensive study of B.C. Hydro's collection policies and procedures.

The objective of the study is to ensure that residential account collection efforts are both effective and fair. B.C. Hydro faces an immense challenge from its sometimes competing roles as a public utility holding a monopoly on an essential service, and as a commercially viable enterprise.

Despite its efforts and an excellent working relationship with the Ombudsman's office, complaints to the office regarding collections have continued to rise over the past two years. It was therefore agreed by B.C. Hydro and the Ombudsman's office that a systems approach was warranted.

This study demonstrates all of the features conducive to broad and enduring change mentioned above.

It is in response to a definite problem trend; it is initiated at the invitation of the government agency with the support of senior management; it involves the institution in its planning and implementation; it combines the expertise of Ombudsman staff in administrative fairness with the field expertise of the authority; and it assumes and works towards the fact that individual fairness and broad policy objectives can be complementary.

This study will be completed in June 1987 and will result in a public report.

4. Criminal Record Screens

Another recent major initiative is a study by the Ombudsman's office of the use by government agencies of police record information to screen individuals working in positions of trust with children.

The paramount interest of the protection of children is recognized in our society and this is reflected in our laws and public services. Protecting this interest requires administrative policy which effectively screens out inappropriate people from providing public services to children. The objective of the Ombudsman study is to provide recommendations to various provincial Ministries and private organizations having responsibility for children on the development of a screening process which is comprehensive, effective and fair.

This initiative is in response to the Ombudsman's statutory responsibility to oversee administrative fairness, and to the receipt of numerous complaints from individuals claiming to be adversely affected by government practices regarding criminal records. It demonstrates the ability of the office to draw on its expertise in fair process in order to provide preventative systems advice to reconcile apparently differing institutional and personal interests. The ministries of Social Services and Housing, Health, Education and Attorney General, will be affected by the use of criminal record checks. The review by the Ombudsman's office has drawn together the divergent interests of these ministries with a focus on establishing a standard of fairness in the administration of this extraordinary employment screen.

Finally, this approach demonstrates again the unity in interest between individual fairness and broad public policy. The interest of children will be advanced by a screening process which does not deter competent people from applying to work with them and on which undue reliance is not placed.

The recommendations will be published in April 1987.

5. Police Complaint Procedure

The question as to who should investigate and rule on public complaints against police officers has been disputed for many years. One concern with the present complaint procedure under the *Police Act* is that it can be intimidating for a person to have to approach the police force which is being complained about.

A further concern is the appearance of conflict of interest where a complaint is investigated internally by the same police force. Regardless of the thoroughness of the investigation and appropriateness of disciplinary or other action, it is difficult for the police force to convince the public of its impartiality in the process. At the same time, the police must be encouraged to be vigilent in investigating complaints against its own members.

The Attorney General announced his intention in late 1986 to amend the *Police Act* in order to establish a civilian complaint procedure under the B.C. Police Commission, which would be independent of the police force complained about. This body would have the authority to receive complaints directly, to monitor the internal police investigation, and to conduct its own investigation where it considered it to be necessary. Although the details of such a process are

not yet known, it appears to be a positive step for the protection of the public and the integrity of the police forces. A similar process is being established under a new *Royal Canadian Mounted Police Act*, so that eventually there should be a uniform complaint procedure for municipal police forces and the R.C.M.P. detachments throughout the province.

However, such a scheme will take some time to establish. In the meantime, the Ombudsman's office can play a helpful role. To clarify this role, and to assist in meeting these concerns, the office settled the following arrangement with the B.C. Police Commission in October, 1986.

(1) Members of the public should be able to receive assistance with the police complaint procedure from the B.C. Police Commission and from the Ombudsman.

(2) Where complaints are received by the Ombudsman regarding police behaviour or the police complaint procedure, the Ombudsman may refer the complaint to the B.C. Police Commission, whereupon the Commission shall:

(a) assist the complainant in filing the complaint with the appropriate municipal police force, giving particular attention to any perception by the complainant of intimidation;

(b) monitor the process to ensure that the complainant is either satisfied with the resolution achieved at any stage or understands and has easy access to the next stage of the complaint process;

(c) keep the Ombudsman advised of the results at each stage of the process;

(d) where the matter is not resolved to the satisfaction of the complainant, provide the Ombudsman with access to the files and other materials and evidence relevent to the complaint so that he can conduct his own investigation and make whatever recommendation may seem appropriate for further police investigation, or otherwise.

The Ombudsman's office is now providing service under this arrangement.

6. Planned Reports

In addition to the above, the Ombudsman's office has identified several areas in need of detailed study, based on its complaints experience. Preliminary work was done in 1986 in the areas of Workers' Compensation, Liquor Licencing and Control and the Environmental Appeal Board. Full systems studies of administrative practices in these areas will be completed in 1987. The above noted techniques will be applied.

D. Outstanding Matters

1. Ex gratia Payments

The absence of specific legislative authority for the provincial government to make ex gratia payments presents difficulties in some cases where the Ombudsman has made a recommendation.

Typically, a problem can arise when a Ministry agrees with an Ombudsman's recommendation that compensation from the government to an individual is appropriate. If the claim does not qualify under section 14(1) of the *Crown Proceeding Act* as giving rise to potential legal liability, no payment can be made under that statute. General statutory authority exists under the *Financial Administration Act* to grant a special warrant and under a *Supply Act* to appropriate funds for any purpose. However, resorting to such general authority could be unduly cumbersome and may not be appropriate to a specific situation.

The need for the government to have standing legislative authority to make specific ex gratia payments in response to Ombudsman's recommendations is clear from the *Ombudsman Act*. The mandate was interpreted by the Supreme Court of Canada to extend beyond legal rights. In the B.C.D.C. case, Justice Dickson said

> "That the Ombudsman's powers of investigation and reporting were meant to extend beyond those cases in which the complaining party asserts a cause of action is evident from S. 22 of the *Ombudsman Act*. . . ."

And

> ". . . it was, at least in part, the lack of any remedy at law for many administrative injustices that gave rise to the creation of the Office of the Ombudsman."

Section 23 of the *Ombudsman Act* makes it clear that the legislature intended the government to have the power to give effect to recommendations made by the Ombudsman under S. 22. Where the government agrees that an ex gratia payment is appropriate, on the recommendation of the Ombudsman to the

Ministry or otherwise, such payment would be facilitated by one of the following statutory provisions.

(i) An annual provision under the *Supply Act* giving the Minister of Finance a vote designated for ex gratia payments. This would not require extensive drafting and could be incorporated into the *Supply Act* for the 1987/88 fiscal year.

(ii) An amendment to the *Financial Administration Act* allowing for ex gratia payments on the recommendation of the Ombudsman.

Although the requisite authority could also be established by an amendment to the *Ombudsman Act*, it is more appropriately located in a general financial statute.

2. Select Committee of the Legislature

By Section 2 of the *Ombudsman Act*, the Ombudsman is appointed as an officer of the Legislature. This responsibility is of fundamental importance to the independence of the office from the Executive Branch of government, whose actions the Ombudsman is mandated to monitor.

However, within the strength of this relationship exists a potential weakness: by being responsible to the Legislature as a whole, the Ombudsman has no specific vehicle for ongoing discourse.

Many jurisdictions, including the provinces of Alberta, Ontario and New Brunswick, have appointed an all-party Select Committee of the Legislature responsible for Ombudsman issues. This would be a positive development in British Columbia.

Real independence from government requires insulation from inappropriate fiscal pressure. Having a Select Committee which could take responsibility for setting and monitoring the Ombudsman's budget would be preferable to the current role of Treausry Board, which is potentially awkward for both it and the office.

The Ombudsman reports annually and by periodic special report to the Legislature as a whole. These reports contain specific recommendations regarding administrative fairness and require detailed consideration and response from the Legislature. However, there is currently no formal way for the Legislature to do so. The appointment of a Select Committee would provide such a vehicle, and would ensure that the issues of fairness raised in an Ombudsman report are not neglected. Such a committee would also allow for continuing dialogue when the Legislature is not in session.

3. Unproclaimed Authorities

The Schedule to the *Ombudsman Act* lists eleven categories of authority over which the Ombudsman has jurisdiction. Sections 1 and 2 include all provincial ministries and corporations, commissions, boards, etc., the majority of the boards of which are appointed by the Province. Sections 3 to 11 of the Schedule have not yet been proclaimed into force.

These unproclaimed sections include municipalities, regional districts, the Islands Trust, public schools, colleges, universities, hospitals and professional societies established by statute. It may be that some of these authorities are currently within the Ombudsman's jurisdiction under Section 2. However that may be, the Ombudsman's office continues to receive hundreds of complaints concerning them. In some cases a resolution is facilitated by the office's informal involvement. In most cases, advice and referral information is all that can be provided.

The principles which support the need for an Ombudsman's office for the authorities in Sections 1 and 2 apply with equal force to those in Sections 3 to 11. It is assumed that the full proclamation was delayed initially in order to allow the office to become established and to proclaim its jurisdiction in an organized manner.

The office is now operating efficiently and effectively and has the skills and experience to monitor the full list of authorities. While this would require a commensurate increase of resources, it is a very economical way of providing accountability and quality control. The costs to be saved by avoiding maladministration are enormous and the Ombudsman's office can play a significant role in ensuring that this happens.

It is therefore the strong recommendation of this report that Sections 3 to 11 of the Schedule be proclaimed.

E. Formality and the Human Factor

A humane system of administration makes allowances for human error. Unfortunately, inflexible procedural formalities often prevent the achievement of this ideal. Before the citizen can take advantage of a right or benefit granted by the state, he or she must first jump one or more procedural hurdles. The individual who fails to clear them can lose the claim, regardless of its merits.

Procedural preconditions of entitlement take many forms. Applications must be in writing, or they must be on a prescribed form; complaints must be made under oath; notice must be given to other persons, etc. The most common, and certainly the most deadly, is the fixed time limit or deadline. Deadline is an apt term because, once the time limit passes, the claim dies.

Ombudsmen, perhaps more than others, see the pernicious effects of arbitrary deadlines. An injured worker's pension is reduced because he mistakenly delays applying for Workers' Compensation. A waitress, believing her employer's promise that he would pay, loses her claim for unpaid wages because she delays complaining to the Employment Standards Branch. A worker does not find out about the remedies available under the *Employment Standards Act* until it is too late. (See CS86-121 under Ministry of Labour) Appeal deadlines can be the most arbitrary and confusing of all the types of deadlines a citizen will encounter. A brief review of British Columbia statutes uncovered no less than 16 different appeal periods with deadlines ranging from 48 hours to six months. These variations may well be justified by the varying needs of the programs to which they apply. Nevertheless, a citizen who has dealings with more than one government agency could easily mix up their respective appeal periods in his mind. In the absence of discretion to extend a deadline, a citizen could lose vital benefits or a chance to dispute a decision through a simple mental error.

Time limits serve a number of legitimate purposes. They encourage claimants to come forward when evidence is fresh and available; they reduce the possibility of prejudice to other parties which can result from delay; they allow administrators to plan their programs better and generally make administration easier and more efficient. Unfortunately, the pursuit of these objectives through the imposition of inflexible deadlines fails to acknowledge that there may be good reasons why an individual cannot comply.

Some people lose out simply through ignorance of the program. Others know about the program but are unaware of the deadline for application. Some who are aware of both fail to apply in time because they reasonably rely on the erroneous advice of others (employers, unions, doctors, lawyers, etc.) and believe they are exempt. Some people apply to the wrong person or agency and believe they have complied. Some people have physical and mental limitations and illnesses that interfere with their ability to meet the requirements. Others justifiably do not give the matter enough priority because of personal crises.

The arbitrary rejection of claims for failure to meet procedural preconditions imposes certain intangible, but real, costs on the system. The intention of the legislature in creating the program can be frustrated in ways that were unforeseen at the beginning. The administration comes to be viewed as insensitive, or even heartless. Perhaps the most deleterious effect is the lingering sense of injustice felt by those whose otherwise valid claims are rejected for reasons unrelated to their merits.

All of these negative consequences of inflexible deadlines could be easily eliminated. We simply need to grant to the authorities the discretion to waive or extend time limits so that the human factor can be recognized. It would be convenient and easy to create a legislative provision of general application which grants discretion to waive any procedural requirement "where it would be just to do so." This provision could be supplemented by a list of factors (not exhaustive) which could be taken into account. Each authority could then develop policy guidelines for the exercise of the **discretion** in the particular circumstances of its statutory program. In this way, consistency and flexibility could be assured.

Who should have the new discretion? It seems the most reasonable solution is to grant the discretion to the authority charged with the responsibility of disposing of the merits of the claim, application, or matter affected by the procedural requirement. This authority will probably be in the best position to assess the sufficiency of the reasons advanced for seeking a waiver of procedural formalities. It will reduce the inconvenience suffered by the claimant to have both the procedural and substantive issues decided by the same body.

The adoption of these simple reforms could contribute significantly to the reconciliation of efficiency and humanity in public administration.

F. Updates

1. Willingdon Youth Detention Centre

On June 19, 1985, the Ombudsman submitted a special report to the Legislative Assembly concerning the Willingdon Youth Detention Centre in Burnaby. The investigation of the residents' complaints had started in early 1984 and culminated in 35 recommendations covering 11 main issues. These recommendations dealt with educational services, facilities, case management, programs, medical services, food, clothing, care and administrative issues, to name a few.

The Corrections Branch responded well to the

lengthy findings and they detailed the changes which were in progress or which were planned for the future.

In April 1986, the Ombudsman initiated a follow-up review at the Willingdon site. Investigators talked with administrators, staff and residents, and read a number of files in order to conclude the study. Currently, the Ombudsman receives and investigates residents' complaints from Willingdon on the same basis as complaints arising from persons in other resident programs.

Significant progress in day programs, case management and educational services were noteworthy in the review. These areas have a significant impact on the staff and residents of the centre. A picture of a healthy and dynamic institution emerged. We proposed some follow-up suggestions and noted three areas which require further development: facilities; implementation of a new token economy system; and a policy on access to medical files.

In the educational area, the Corrections Branch and the Ministry of Education want to meet the special educational needs of youths in custody on a level comparable to community standards. This goal was promoted by appointing a principal with direct on-site supervision of three centres, including the Willingdon Youth Detention Centre. At the time of our study, greater coordination between teaching staff and case managers was evident. The provision of permanent space for the educational program is still pending a capital fund approval.

An obvious need in the present picture is the need for an adequate library or resource centre.

In the educational field, we made three proposals which could improve this area of the program. Firstly, we proposed that the Corrections Branch take steps to make the formal report cards for students available to their parents. The school teachers also provide a resident's case manager with interim progress reports in respect to grades, attendance, attitude, work habits and educational program.

Secondly, we proposed that consideration be given to reducing class absences by controlling other events which occur during class periods. We found attendance-to-enrolment ratios varying between 75 and 87 per cent. Regular class participation must be given high priority. We recognized that some absences, like court appearances, are beyond the control of the Correctional Centre.

Thirdly, we proposed that consideration be given to employing a person on a full-time basis to do psychological-educational testing. If this proposal were followed, the person employed would also need support staff to do routine filing, records searches and contacts with schools to obtain individual records.

Day programs, outdoor recreation and case management supervision were found to provide an adequate basis for youth to learn responsibility, to maintain or develop a healthy respect for others and to work toward established goals. Physical recreation time can range from two to four hours per day including both indoor and outdoor activities. A guided work program and arts and crafts program were running well. A full-time volunteer coordinator helped match the community interest and resources with the internal needs of the institution. This program was in full swing. The institution was in the middle of developing a new token economy system in which a youth's behaviour could be monitored, reinforced and rewarded.

The Ombudsman was initially concerned that professional medical staff should be assigned to the Willingdon Centre on a 24-hour day basis. The review found that medical coverage was extended by increasing the nursing staff so that a nurse is available from 7:30 a.m. to 9 p.m., Monday through Friday. Senior correctional officers introduced into the administrative structure this past year were required to hold a first aid certificate. And the provincial Director of Medical Services for the branch is currently developing a medical policy to provide essential information to staff while keeping files confidential.

The branch now uses the expertise of a Vancouver nutritionist to monitor the youth institution, in an effort to resolve food complaints. We found the institution responsive to complaints concerning food service, taking steps to resolve them with the food service contractor. The institution also reviewed the clothing needs and brought the clothing issued to residents up to a reasonable standard.

An alarming rate of self abuse (residents slashing their arms with sharp objects) was an important part of the Ombudsman's original concerns about the Willingdon Centre. We found that, in spite of a high resident-to-staff ratio, the serious slashing rate had been substantially decreased. The institution appeared calmer and a greater number of activities were provided. Outdoor and indoor recreation, the day program alternatives and a positive, energetic attitude on the part of staff appeared to have had a beneficial impact. The opening of new facilities in the interior of B.C. in November, 1986 should reduce the number of youth at the Willingdon Youth Detention Centre who are a long way from home and without local community support.

At the end of our investigations, we detailed our conclusions to the Corrections Branch. We believe the extensive review of the centre was worthwhile and beneficial for residents and the Corrections Branch.

2. Libby Reservoir #3

One of the first complaints received by this office was finally resolved in 1986. The case, involving valley land flooded to form the Libby Reservoir in southeastern British Columbia, was previously reported in the 1980 and 1984 annual reports of the Ombudsman.

Thirty-one hectares of the complainant's land were flooded for the reservoir in the early 1970s. The complainant operates a ranch with her brother. Her family has lived on the property for generations. The 31 hectares were expropriated by the government and she was advanced most of the payment for its value, but not all of it, because she would not sign a final settlement until she received replacement land from the government to add to her ranch. These efforts were based on a commitment made by the Minister of Lands, Forests and Water Resources (as it was at that time). Prior to the flooding, the Minister promised that farmers and ranchers who were displaced by the Libby Reservoir would obtain replacement land and be no worse off after the flooding of their valley than before.

Because of a lack of direction and coordination among the various government departments and because of the emergence of new priorities and competing uses for the land base, successive land applications made by the complainant beginning in 1969 were continually disallowed. However, a Libby Dam Resettlement initiative begun by the Deputy Minister of Lands, Parks and Housing in 1981 assisted the complainant with her final application. The only remaining obstacle, reported in the 1984 annual report, was the removal of half a hectare of land sought by the complainant from the provincial forest. The necessary processing took place in 1986 and in November, the complainant's application for 30 hectares of land adjoining her ranch was finally approved, and the purchase completed.

We also learned in 1986 of another East Kootenay rancher who reached a settlement of his claim for replacement land through the courts. This complainant was seeking replacement land for property which he lost to the Libby Reservoir, for purchase at 1972 values. The complainant's lawyer was able to reach a settlement prior to the date set for trial.

3. A Case of Administrative Negligence

The Ministry of Human Resources undertook to pay directly the insurance premium of one of its clients but failed to pay it on time. As a result, the Ministry paid approximately $30,000 for property lost when the client's mobile home burned.

The case illustrated the principle that when an authority knows, or reasonably ought to know, that a citizen is dependent on it, a duty of care towards the citizen arises. The breach of the duty constitutes administrative negligence.

The complainant, separated from her husband, lived with her three children in a mobile home. She was receiving income assistance and found out the insurance on her mobile home had lapsed. She requested the help of the Ministry to help pay this insurance and was told the Ministry would pay the premium upon confirmation of the cost.

The complainant returned with the necessary cost information and was assured the Ministry would send a cheque to the insurance agency. She offered to deliver the cheque personally but the Ministry worker said the cheque would be mailed directly. Later the same day, the necessary documentation was prepared to issue the cheque but this document was not processed for some unknown reason. Instead, it was placed in the complainant's file. The Ministry worker in charge of the file then left for a week.

Six days after this visit to the Ministry, after which the complainant thought she would be insured, her mobile home was destroyed by fire. No one was harmed but she lost everything she owned. After the fire, she found out the insurance company had not received a cheque for the insurance, and as a consequence she was not covered. Had the cheque been mailed the day she talked to the Ministry worker, she would have been covered.

The complainant contended that the Ministry should compensate her for her losses as it was the Ministry's fault that she was not insured. The Ministry agreed it had made a mistake but initially felt no responsibility for the loss.

We believed that there were fundamental questions at stake. Can members of the public rely on public employees to do what they say they will do? If there is reliance and they find themselves damaged by an action or omission, is the government responsible to repair that damage? We believed so, especially in a situation like this, where the complainant had no choice but to rely on the Ministry, where she had done everything possible to meet her duties, and where the Ministry knew that she was depending on it.

On completion of our investigation, we reported our findings to the Ministry and recommended compensation to the complainant. The Ministry refused to implement our recommendation and the matter

was reported to Cabinet. After a thorough review, the government agreed that the complainant was entitled to compensation for all losses which would have been covered if the insurance cheque had been mailed. We negotiated a settlement between the Attorney General's Ministry and the complainant with the proviso that the complainant use the amount related to loss of the trailer for a down payment on a new home as she was an income assistance recipient.

Steps have also been taken so that this situation should not happen again. The Ministry was advised by the Attorney General's Ministry that, when Ministry staff agree to pay home insurance, they should telephone the insurer to arrange for immediate coverage. That way, coverage will be in place even if a cheque is delayed or misplaced.

Selected case summaries are detailed under the headings of each ministry and other authorities. The cases are selected for their individual interest or representative significance.

Many of the cases reveal, in the course of investigation, services, procedures and appeal processes perhaps not widely known but already available to the general public within the existing policy of the various ministries.

Tables preceding the case summaries within each authority detail the total number of cases and their disposition. It should be noted that the volume of cases does not necessarily reflect the amount of time required to conclude their investigation. Time spent on each case varies considerably.

Part II
Case Summaries

Ministry of Agriculture and Food

Inquiries	1
Declined, withdrawn, discontinued	3
Resolved: corrected during investigation	1
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	4
Total number of cases closed	9
Number of cases open December 31, 1986	1

Bank approval needed

A family applied for a loan under the Agricultural Land Development Assistance Program to help them replant a small orchard for eventual retirement income. At the time of the application, there were two mortgages on the property, held respectively by a credit union and a bank.

An Agricultural Land Development Assistance loan is governed by the *Agricultural Audit Act*. The legislation requires that an unpaid loan be placed against the property's tax roll. This, in effect, places the Crown in a preferred position to other creditors. Recognizing this, the legislation requires that any application for an ALDA loan first receive the approval and consent of all prior charge holders on the property. In this case, neither the credit union nor the bank would give consent, hence the application was rejected.

The Ombudsman's position supported the Ministry. The legislation is clear. It safeguards the public purse. Conversely, the position of the credit union and the bank are appreciated. They, too, must safeguard their interests and adhere to their governing policies. We suggested that the complainant discuss the legislated requirement with the credit union and bank. It may be that the low interest privileges and property enhancement made possible by a relatively small ALDA grant offers an appealing proposition to the other creditors, particularly when all other options are considered.(CS86-1)

Livestock insurance at issue

A beef producer complained to the Ombudsman that she was misinformed by an employee of the Ministry of Agriculture regarding the minimum number of livestock required to receive 100 per cent insurance coverage in the year following the application. As a result, she was being unfairly excluded from full coverage and had to accept coverage at a graduated scale. At issue was the minimum number of livestock and the time limit for application.

The B.C. Federation of Agriculture and the B.C. Cattlemen's Association screen applications and make recommendations to the Ministry for this insurance coverage. They had initially rejected the application for 100 per cent coverage. Upon request, they reviewed the case and again concluded the complainant was not misinformed by Ministry staff and that the application was delayed due to confusion on the applicant's part. Under these circumstances, no exception to the standard policy of rejection was recommended. The Ministry's acceptance of this peer-group decision was considered reasonable and, in the absence of any other mitigating factor, the complaint was classed as not substantiated.

The complainant also claimed that the language of the Act was confusing and cited examples. The Ministry agreed and undertook to review the entire Act. (CS86-2)

Pound district possible solution

An individual who lived outside a municipality approached the Ombudsman's office to question why his neighbour was not responsible for fencing his property to contain his cattle.

An Ombudsman officer discussed the situation with the Supervisor of Regulatory Services in the Livestock Branch of the Ministry of Agriculture and

Food. Section 10(3) of the *Livestock Act* makes it clear that an owner of unenclosed (i.e. unfenced) land outside a pound district has no redress if cattle come onto his land. However, section 6 of the Act allows the owners of land outside a municipality to apply to the Ministry to establish a pound district. Before submitting the application, the applicant must notify all owners of land who reside within the boundaries of the proposed pound district and the application must be signed by a majority of those land owners. If the application for a pound district is approved, then the owners in that district are responsible for containing their animals.

The complainant was also referred to section 3 of the *Trespass Act* which states that, unless otherwise agreed, owners of adjoining land in a rural area must equally share the cost of putting up a fence. (CS86-3)

Ministry of Attorney General

Our business with the Ministry of Attorney General is varied, including everything from ships seized by sheriffs to contamination in Corrections' cafeterias.

While the number of complaints we received about this Ministry rose over the previous year, we do not believe this necessarily reflects a problem. We are pleased to report that our relationship with the Ministry has continued to improve and that as a result of mutual cooperation, several problem areas have been resolved, either on a case by case basis or by instituting policy changes which will affect many cases.

We have established a sound working relationship with this Ministry over the past few years. This makes our jobs easier but its real impact is on members of the public for whom individual problems can be resolved and who benefit from improved or clearer systems.

Two such systems apply to complaints against the police. These have been developed with each of the two authorities, the RCMPolice and the municipal police departments. The latter are dealt with pursuant to the arrangement described in the general section to this report or by direct investigation and recommendation.

The Ombudsman has no authority to investigate complaints against the RCMP. If a complaint is received, only brief facts are taken to establish location and what the complainant has already done. This is necessary to give proper advice, which usually takes one of three forms: 1) advise the complainant to attempt to settle the complaint at the local detachment level, or if unsuccessful, 2) contact the commanding officer of the appropriate subdivision, and if still dissatisfied, 3) contact the commanding officer in Vancouver.

For the past three years, our staff have participated in some of the training offered by the Justice Institute. This began with programs for sheriffs and family court counsellors, and expanded last fall to include training for corrections security staff.

We have been pleased to be part of this mutually beneficial process. Our staff can learn by becoming more aware of the training and expectations of the Ministry staff. We can contribute by explaining to staff the role and functions of our office. Perhaps best of all, it gives us a chance to meet field staff, and to talk about shared concerns, outside the crisis, case-oriented framework in which we usually deal.

Inquiries	36
Declined, withdrawn, discontinued	289
Resolved: corrected during investigation	380
Substantiated: rectified after recommendation	6
Substantiated: but not rectified	0
Not substantiated	286
Total number of cases closed	997
Number of cases open December 31, 1986	219

Goods sold while absent

This year, we finally completed our work on a complaint received in 1983. The complainant contacted us when he discovered, on his return from Europe, that a sheriff had entered his rented storage unit, removed goods and sold them at auction to pay a $1,000 Small Claim Court decision. That decision had also been made during his absence in Europe.

He thought it was unfair. Why, he asked, couldn't the sheriff have waited until he returned and given him a chance to pay? Why didn't the sheriff have a witness, or a list of what he took? Why didn't the auctioneer have an itemized list of what was sold? And most importantly, how could he reconcile the difference between the number and value of items missing and the amount raised by the sale?

All of these were good questions, but our investigation raised even more issues. Did a sheriff have the right to enter the locker in the debtor's absence? Shouldn't the sheriff attend the sale to stop it when enough money was raised? Should the sheriff obtain appraisals before taking unusual items for sale at general auction? How are sheriff fees calculated, if more than necessary is seized or sold? Should the sheriff use and pay an auctioneer when other methods might be cheaper and more appropriate? Why didn't sheriff policy require an inventory of the seized goods? When a sheriff enters premises without the debtor, what steps should be taken to resecure the premises?

In the years since the complaint came to the Ombudsman's office, most of these policy questions were settled. New policies were issued giving clearer instructions which should ensure that debtors' and creditors' rights are balanced in the seizure process.

What was left was the question of compensation, a very difficult question because of problems in the seizure. With no inventory of the seizure or the sale, how could anyone determine what was sold, let alone what it was worth.

By negotiation through our office, the complainant and the Ministry agreed to put the question of com-

pensation to binding arbitration under the *Arbitration Act*. An award of $20,000 was made in late 1986. (CS86-4)

Vital Stats certificate needed

A man and his fiancee jointly purchased property before they were married. After their marriage, the wife's married name had to be placed on the title to obtain necessary refinancing. When the new bride took her church marriage certificate into the Land Title Office, she was informed that it was not satisfactory proof of her change of name. She was informed that she needed the marriage certificate issued by the Vital Statistics Branch once the marriage is registered. The man then contacted the Ombudsman's office suggesting this requirement denigrated the validity of their church marriage.

Since the name appearing on the title papers is accepted as evidence of ownership, Land Title policy is to accept only the best possible evidence when there is a request to change a name on the title. The Vital Statistics marriage certificate is seen as being the best evidence available because it is registered by Vital Statistics after acceptance and verification of church documents.

We agreed with this policy and the rationale behind it. As a result of this complaint, the director of Land Titles issued a memorandum to all registrars of title in the province, reminding them to make a special effort to explain the reasons underlying their decisions. The land title registrars and director were most cooperative in dealing with this matter.(CS86-5)

Good reasons for survey

The Ombudsman's office received a complaint from a property owner when the registrar of a Land Title Office demanded a survey be done before granting permission to dissolve the property line between a parcel of land he had owned for some time and an adjoining piece of property he had recently bought. A few years before, the complainant asserted, he had been allowed to create his previously-held property by dissolving two lot lines, without requirements or restrictions.

Enquiries were made with a deputy registrar of the Land Title Office and with a local land surveyor who had looked into the matter for the land owner. Section 100 of the *Land Title Act* allows the registrar to require a "reference or explanatory plan" in such cases. Although the registrar also has the discretion to waive the survey, the Ombudsman's office pointed out to the property owner that a survey could avoid future disputes or problems in developing the land or obtaining a mortgage. As well, the Land Title Office may be considered responsible for certain problems if the registrar has not taken sufficient precautions when he processes such registration applications as this. We therefore felt his position to be a reasonable one. The investigation was therefore discontinued as the complainant had the available remedy of having the survey done. (CS86-6)

Autopsy report delayed

An elderly man's wife had died in hospital, however, the report of the autopsy was delayed about eight months. He complained to the Ombudsman's office about this delay. He also expressed concern to us that the results of the autopsy were different from what he believed the medical diagnosis prior to death had indicated and upon which he felt treatment had been given.

Responding to our enquiry, the Provincial Coroner shared and supported the complaint involving the delay in the autopsy report. Within the authority of his office, the coroner had the autopsy report prepared.

On the second aspect of the complaint, the coroner undertook a thorough review. He found that during treatment before the death of this woman, a medical opinion on the possible cause of the illness was expressed. It was, however, ruled out by the autopsy. The medical facts did not support the complainant's allegation. (CS86-7)

Ministry agrees to pay

A youth had spent some time in a treatment centre. He was about to reach an age when he could discharge himself. However, his probation officer layed charges of breach of probation, effectively keeping him in custody.

A friend of the youth was contacted and made arrangements for a legal aid duty lawyer to advise the youth. The legal aid lawyer did not proceed, however, since the Attorney General's Ministry normally appoints legal services for youths in the custody of the Superintendent of Family and Child Services (Ministry of Human Resources). But the youth was scheduled to appear in court in a short time and following the long weekend, so his friend retained outside counsel to represent the youth, fearing the Ministry would not have time to provide legal services. The friend then sought reimbursement of the fees paid on behalf of the youth.

This friend complained to the Ombudsman when the Attorney General's Ministry delayed reimbursing him. He understood that the Ministry of Human Re-

sources had approved payment and sent the matter to the Ministry of Attorney General.

While under no legal obligation to reimburse the complainant, the Attorney General's Ministry agreed to do so. Payment was delayed because the youth's lawyer had left the province and had to be contacted to confirm that the money had been paid for services provided. He was subsequently paid. (CS86-8)

Courtroom inaccessibility

In the spring of 1986, we received two complaints about the inaccessibility of courtrooms for wheelchair-bound people. The complaints arose at different locations. One complainant was unable to attend a court hearing because her wheelchair would not fit through the door into the courtoom. The other complainant required assistance to get up a staircase to a courtroom, resulting in a delay. Both complainants sought facilities which would make the courtrooms accessible to them.

Our investigation found that the current building code for new public buildings requires wheelchair accessibility, but does not require the upgrading of existing public buildings. We toured one of the sites involved with a representative of the Canadian Paraplegic Association, British Columbia Division, who provided suggestions and data on available lift devices. This information was passed on to the Ministry of the Attorney General in the hope that a lift would be installed. This suggestion was rejected, however, because of cost and because the courtroom was in the building temporarily.

At the other site, where the doorway was the problem, after our investigation a new courtroom was installed which is accessible. Problems could still result again if that particular courtroom is not the one where the handicapped person's hearing is to be held.

We urged the Ministry to adopt a policy that would ensure all people would be assisted into courtrooms. Being carried into a courtroom is not a perfect solution. However, the policy has been adopted. Court employees expressed some concern about what would happen if they injured themselves while helping to carry someone. If assisting the handicapped is a staff requirement, it is covered under the *Workers' Compensation Act* as is any other activity carried out on behalf of the employer. (CS86-9)

Provincial divorce rules

The new federal *Divorce Act* prepared the way for mutual applications for divorce. A mutual application means neither party is suing the other but that both parties are requesting it. While the act does not specifically state mutual applications shall be permitted, the language is broad enough that some of the provinces have revised their rules to permit mutual applications. We received a call from a man who felt it was unfair that British Columbia didn't permit mutual applications.

While not a matter of administration, we were able to provide the man with more information from the provincial Ministry. At the present time, the same result as a mutual application can be reached by a more cumbersome procedure of petition and counterpetition, on the same or different grounds. Further, the Supreme Court Rules Committee has adopted the changes which will allow mutual applications. Once an Order-in-Council is passed amending the rules of procedure, the mechanism for implementing the change will be put in place. (CS86-10)

Diversion on track again

When a person is charged with a summary offence, sometimes diversion is recommended instead of a trial. The accused is diverted from the court system to such things as community work. Diversion programs involve probation officers as well as Crown Counsel.

One accused man complained to the Ombudsman that he missed an option for diversion programs because of an error by either Crown Counsel or Probation Services. He had received a letter referring him to a diversion program but the appointment was made for a week prior to the date he received the letter. The accused's name had been re-entered on the trial list because he had missed his diversion appointment.

After numerous phone calls from our office to Crown Counsel and Probation Services, we were able to get the regional Crown Counsel to agree to adjourn the scheduled trial appearance and to offer another opportunity for diversion. (CS86-11)

Creditor listed in ad

When a creditor obtains a judgment against a debtor, there are several options available for collecting the debt if the debtor does not pay upon judgment. One option is to have the sheriff seize any personal property of signficant value and sell it. If this happens, the goods and items to be sold must be advertised.

One person complained to the Ombudsman when she was listed as a creditor in a sheriff's sale newspaper advertisement. She felt she had been exposed unnecessarily to possible public ridicule and treated

unfairly because other sheriff's advertisements did not list the creditor's name.

Our investigation found this sheriff had contravened no regulation or policy. But we found a discrepancy between sheriff's offices in the way the advertisements were worded and a lack of policy on whether or not the creditor should be named.

The matter was reviewed by the Sheriff's Advisory Committee and the Court Services Policy Board. As a result, a new policy was implemented which directed that the names of creditors not be published in any advertising for a sheriff's sale unless it is a notice of a land sale. We appreciated Court Services' prompt response to our concern.(CS86-12)

Confinement simply a convenience

A mother living in B.C.'s Interior called us when her 16-year-old foster son was sentenced under the *Young Offenders Act* (YOA) to a term of 'open' custody in a facility in the Lower Mainland. Open custody under the YOA means the youth is in a residential setting but often involved outside the facility for school, counselling or health concerns.

Despite being sentenced to open custody, this boy was in fact in a cell in the local police station in the Interior, with 24-hour lock-up and virtually no privileges. He was to remain there for 10 days until he would appear as a witness at an upcoming trial. In this case, he was the victim of an alleged sexual assault by his foster parent in a previous home.

It seemed to us that the boy was being kept in police cells purely for convenience, so he would not have to be transported back and forth to Vancouver and so he would be available for interview by the prosecutor in the Interior. It did not seem reasonable to hold the victim in jail for 'convenience.' It also seemed possible that it was illegal to hold this boy in a police cell when a judge had ordered him sent to a specific 'open' facility in Vancouver.

When we drew this case to the attention of Sheriff Services and Crown Counsel, the youth was moved immediately to Vancouver. (CS86-39)

Long time with no food

Sheriff Services staff from the Interior conveyed two inmates from the Lower Mainland Regional Correctional Centre to Kamloops Regional Correctional Centre (KRCC). The trip started at 9 a.m. and ended after 4 p.m.

One of the inmates called our office to complain that they were given nothing to drink or eat during the trip. He said the deputy sheriffs escorting them stopped to eat lunch at a fast food restaurant, but refused the inmates' request for food for security reasons and a shortage of cash.

Our investigation found that prisoners on this trip normally reach KRCC in time for late lunch. Several delays occurred on this particular trip. The deputy sheriffs were reluctant to open the van and feed the prisoners for security reasons. Also, they stated that they had insufficient funds to buy everyone a meal.

Court Services agreed that it is unacceptable to leave prisoners for such a long period of time without food or drink. An apology was issued to the prisoners and all employees have been informed of the steps to take if an unavoidable delay will interfere with institutional mealtimes. (CS86-41)

Office of the Public Trustee

The Public Trustee's job is an enormous one. He and his staff manage the financial affairs of persons who are judged to be incapable of managing their own affairs because of mental infirmity and for whom no other person has been authorized by the Court to act. They also administer the estates of people who die without leaving a will and act as guardians of the financial interests of children in certain circumstances.

In past years, we have reported that the majority of complaints against the Public Trustee related to slow, impersonal and unresponsive service by the office. While we are unable to report that this is no longer a problem, we are able to say that there has been some improvement. In addition, we have observed and been encouraged by a greater degree of cooperation shown to us by the Public Trustee and his staff.

Care with committeeships

Many people cannot care for themselves or for their financial affairs because of advancing age, mental retardation or other infirmities. The *Patients Property Act* provides a method to protect such people. Mental health facilities around the province can obtain medical opinions and certify that a person is no longer able to manage his own affairs. A court can also make this order, making someone responsible

for either the affairs or the actual 'person' of the patient.

Most of these appointments (committeeship) are held by the Public Trustee's office, but there are also a large number of cases where a family member or a friend applies to become committee. In those cases, the Public Trustee has a role. It receives notice of the request, and can consent or dispute to the court.

For many people, it is preferable that a friend or relative be appointed, so that friend can be nearby and be more responsive day to day than any office could be. The vast majority of private committees are concerned and responsible people, but there is potential for abuse of or harm to a patient, if someone unscrupulous or incompetent is appointed. This is of particular concern when there is a request for committeeship of the person of a patient, which grants authority to make decisions as to where a patient lives, what medical treatment is received and so on, much like the powers a parent has with a child.

Because of the potential danger, we approached the Public Trustee and asked for increased scrutiny of applications for private committeeship. We were particularly concerned with applications involving people who live in facilities like Glendale or Riverview, and with applications involving custody of the person. The Public Trustee is the only possible check on such applications, as the law does not require notice to a social worker, the facility or hospital, or even to the next of kin.

The Public Trustee agreed that these matters warrant careful attention and introduced procedures to ensure that his office is fully informed before reaching a decision whether to consent to the application or to dispute it in court. (CS86-13)

The right to know about money

Two children whose father murdered their mother became wards of the province. The Superintendent of Child Welfare was responsible for their care, and the Public Trustee was responsible for their financial affairs. There was little money except for a small monthly income through the Criminal Injuries Compensation Fund, administered by the Workers' Compensation Board. The children knew about the money and thought that it was accumulating, to be given to each of them when they turned 19 years old.

When the older child became 19 and applied for the release of her money, she was surprised to learn that most of it had been used to cover the cost of her care over the years. She had not been told it would be used and thought that the Public Trustee had no right to give 'her' money to MHR. To this person, it looked like three branches of government moving money between them, and accountable to no one.

What the Public Trustee had done was legal. The Workers' Compensation Board award was to provide for her maintenance and it was proper for the Public Trustee to use it towards payment for foster care. We were concerned, however, by two aspects of the case: first, that no one had ever told the children the money was being used, thereby raising false expectations; and, second, that the release form which the Public Trustee has infants and patients sign before releasing money was inadequate. The form did not advise them of their right to see a lawyer, to ask the court to approve their financial accounting, and to sue if one believes the Public Trustee has acted improperly.

Both questions involve the public's right to know what a government agency is doing when it affects their lives, and an individual's rights in the process. For the Ombudsman's office, the rule of thumb is, the more pervasive or critical the impact on a person, the more a government agency should strive to give clear and adequate information.

In this case, both issues should be resolved for the future. The Public Trustee amended its form of release to give clear and complete information to its clients. The Ministry of Human Resources agreed to consider developing a policy to advise its wards (or the appropriate adult) when it uses the child's own funds to contribute towards the cost of foster care.(CS86-14)

Court order needed to sell house

A woman complained that the Public Trustee was impeding the payment of the sale proceeds of property which was owned jointly by her daughter and her daughter's husband. The daughter was an invalid, living in a chronic care facility, and the complainant and her son-in-law were joint committees, that is, placed in charge of all financial and legal transactions for her.

Our investigation revealed that the committeeship order, made by the Supreme Court of British Columbia, required that the property in question not be sold without a court order. In fact, the property was sold without a further court order. The Public Trustee felt he could neither approve the sale nor the payment of the sale proceeds. That could only be done by a further court order.

In this case, if there was any fault at all, it lay with the lawyer who had obtained the committeeship order on behalf of the complainants and who also handled the sale of the property without obtaining the required court approval. The court order was subsequently obtained and the funds were released. (CS86-15)

Unnecessary delay

A former resident of Vancouver moved to Winnipeg and subsequently became a patient of the Public Trustee of Manitoba. That authority requested the help of the Public Trustee of British Columbia in retrieving and forwarding some of the man's belongings, books and knick-knacks, from his vacated Vancouver apartment. After a long time, it became apparent that no action had been taken.

The complainant, no longer a patient of the Public Trustee, then asked the Ombudsman of Manitoba to intervene. The Manitoba Ombudsman noted that the letters and telephone requests of the Manitoba Public Trustee to its B.C. counterpart seemed to have been generally ignored, and so asked the Ombudsman of B.C. to investigate.

Our office found there was unnecessary delay — almost two years — on the part of the Public Trustee of B.C. That authority acknowledged the delay and expressed its regrets to the Public Trustee of Manitoba. Since it could not be clearly established that the loss of property was specifically caused by this delay, the Ombudsman's office discontinued its investigation as not being beneficial to the complainant to pursue further.(CS86-16)

Corrections Branch

Complaints from adult correctional institutions were up in 1986, about 20 per cent over 1985. This increase may reflect the greater number of contacts between the Ombudsman's office and the institutions.

Some 792 complaints were closed from youth and adult correctional centres. The largest percentage (29.3) were classified under a general administrative category which included complaints about food, clothing, correspondence, telephone use, storage of personal possessions and abuse from other residents or staff. Fifteen per cent of closed complaints dealt with program matters, while 14 per cent dealt with medical complaints.

Thirty-eight (38) per cent of the complaints were resolved during investigation, 27.8 per cent were not substantiated, and 29.9 per cent were declined, discontinued or withdrawn. Complaints referred to the Division of Inspection and Standards are classified as discontinued. Residents who have not used the appeal or complaint procedures available to them within the correctional system are referred where appropriate.

Correctional Institutions

A few years ago, this office became increasingly aware that in order to fulfill truly the mandate of Ombudsman, it would be necessary for it to be visibly available to the concerns of all British Columbians. We had in the past attempted to reach out to citizens whose access to the Ombudsman's services had been hindered by geographical barriers. Then we realized the need to reach out also to those who resided behind the barriers of institutional life.

We embarked upon a program of regular visitation to the province's institutions — correctional, mental health and social service. Initially, we encountered some suspicion and uncertainty about what we were doing in these places but gradually, as trust developed and people became more comfortable with our presence, we found that both residents and staff were open to sharing with us their concerns about the impact of bureaucracy upon their life situations. Most often these concerns related to events within the institutions, although issues involving other governmental authorities were not uncommon. As these concerns were shared with us and as we were able to resolve a number of these issues, people in the institutions began to accept that we could assist in finding solutions to their problems.

Over the last while, we have tried to become more sensitive to, or to identify, those factors which make for a more effective institution — not just one which functions smoothly in an administrative sense, but one in which human values are affirmed and a caring atmosphere is evident. The building blocks of successful institutional life can probably be grouped under the broad considerations of emphathetic staff and sufficient physical care within a supportive administrative framework. On the basis of our experience with institutions, comment is appropriate on certain of the specific elements that comprise these categories.

Food Services

One feature which certainly bulks large in determining the well-being of an institution is its food service. The old adage that an army moves on its stomach speaks true for the progress of any human collective. Thus we have made it a point to dine with residents in the institutions we visit. We are pleased to report that most of these meals have been perfect-

ly acceptable — some of them have been outstanding. The cook-managers at Boulder Bay and Stave Lake camps, for instance, have in the past year prepared meals that would go a long way toward satisfying the most discerning of palates. There are a few blotches on the institutional sideboard. One mental health facility receives its meals from another facility some distance away. Food quality seems to deteriorate in the space travelled between the two buildings. However, the administration of the facility concerned is grappling with the problem, and we hope a more satisfactory arrangement will be discovered. One major correctional facility has experienced a number of difficulties in recent years. The impression of the Ombudsman officers who ate there this past year was that the meals would certainly not contribute to resident satisfaction. The officer in charge of food services at this institution has now completed a course on the subject — so improvement may be expected in the year ahead.

Food service is one of the main pillars upon which a successful institutional program stands. If the residents find the food good, much else may be forgiven. If the food is not good, other programming, however skillfully crafted, will suffer. Some facilities claim that their size is a drawback to providing warm, attractive meal service; others blame their handicap on the limitation imposed by a contracted-out system. Our response is that if such features do not constitute an impediment for the institutional facilities which do well in this area, they should not do so for the others.

Programs

Activity programs are another vital area of institutional life. These go a long way in determining whether the long hours of each day are to be passed constructively or whether boredom, with its attendant problems, will characterize the resident's waking hours. Here again, although the picture is slightly mixed, it is largely a positive one. Institutional staff display considerable creativity in creating new outlets for residents' energies. With some variation, reflecting the needs of the type of institution, manual arts, sports, handicrafts — everything from leather work to fly tying — are usually there for the seeking participant. Problems do arise. The activity of the moment may not be every resident's cup of tea. A particularly enjoyable program may be curtailed for lack of funds, or construction problems, or changes in the weather, or the transfer of the activity leader. But generally, there is sufficient to occupy one's time, and enough involvement from interested staff and volunteers that the resident who really wants to, should be able to fill up his or her days with worthwhile activity.

Personnel

Most of our visits were to correctional facilities — both juvenile and adult. The local director of a provincial facility or forest camp is a key factor in determining how effective any given institution will be. Every facet of the institution's life tends to function as imaginatively or creatively as the perception of the local director permits it. Generally, this province can be proud of the persons who occupy these pivotal roles. While we have encountered the few who have manifested the authoritarianism or cynicism to which their task could easily lead them, we are impressed by the number of directors who have been able to see their roles as going beyond that of mere containment — directors who are concerned about the residents as persons with unique needs, who recognize a capacity for growth and change, and who encourage the fulfillment of such latent capacity whenever the opportunity permits. The attitude of an older director who over the years has seen it all and has worked with a particularly deviant type of resident is a good example. From him, one might expect to hear a cynical assessment of human behaviour. Instead, he positively glowed as he recalled the many he knew who have been through the correctional system and who have succeeded in turning their lives around. Another example is the sensitivity of a youth camp officer who, while he recognized that he was working with offenders, made clear nonetheless his awareness that they were still boys. The task of the correctional director is difficult; the demands faced are many. But the competent manner in which directors often respond to the challenge gives assurance that there is hope for the residents who leave these institutions and return to the community.

In commending the directors, one must not downplay the important contribution of the line staff — the people who must give life to the director's vision. Here again, on our visits, we have encountered the occasional prison guard or medical staff person who might be well-advised to re-think his or her line of work. But, the number of institutional workers who daily demonstrate that they want to do a good job, who genuinely care about the residents, and who see in their occupation an opportunity to help other, less-fortunate people is truly impressive. This observation includes employees in all the types of correctional, mental health and social service institutions we have visited.

Concluding Assessment

If one were to assess generally the overall health of our provincial institutions, the conclusion would be heartening. We are able to report that we found many capable administrators in place, and the major-

ity of staff persons are sensitive to their responsibilities. There are problems. One would not expect otherwise in a dynamic organization that must respond to shifting patterns, often uncertain resource availability and changing requirements of the people involved — both staff and residents. But the problems that exist are amenable to solution.

Some of the areas where institutions could improve their functioning include:

- ☐ the penchant of some staff persons to make ad hoc decisions which left residents perplexed and bewildered as to what was the proper behaviour expected of them;
- ☐ the failure to stick to the rules at some disciplinary hearings, so that meeting the requirements of natural justice was seriously called into question;
- ☐ the tendency for some institutions to downplay, sometimes to the point of losing sight of, their resident grievance procedure;
- ☐ the difficult-to-deal-with attitude problems on the part of certain staff. For example, a lack of civility or respect toward juvenile or adult residents which, in turn, encourages disrespect on the part of residents toward staff, so often leading to a charge of using obscene language — in short, a vicious circle.

Nevertheless, the will is there within provincial institutions to address constructively issues such as these. And that is the first step toward achieving resolution of any problem.

Food tampering

Inmates at an adult correctional facility complained that food from the kitchen was taken through the protective custody unit before arriving in the segregation unit. Inmates in segregation were concerned that their food could be tampered with by the inmates in protective custody before they got it. There had been instances of spitting and urinating on food.

The complainants decided, after their initial contact with the Ombudsman's office, to resolve the problem themselves. They discussed their concerns with correctional officials, who agreed to allow an inmate from segregation to go to the kitchen and get the food trays. This new practice assures the inmates that their food has not been handled by inmates from other units.(CS86-17)

No earned remission while AWOL

An inmate escaped from a medium security institution and was returned to a maximum security institution two days later. At the end of the month, the maximum security institution assessed the amount of remission to be earned by that inmate for the whole month. The inmate believed that the correctional authorities had stated in court that he would not lose further remission as a result of internal disciplinary charges. He was convicted of escape. When he earned only five days of remission for the month, he appealed unsuccessfully to both the District Director and to the Division of Inspection and Standards.

We considered his complaint in the light of the Canadian Charter of Rights and Freedoms which affirms that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. This right underlines the significant and critical work of the remission award committee in each institution whose decisions directly affect the liberty of each prisoner each month.

The complainant did not lose any further remission as a result of his escape but neither did he earn the full remission credit for the month. An inmate who is not in custody and is unlawfully at large cannot earn remission. His file record also documented unsatisfactory compliance with the program of the institution while an inmate before his escape. The regulations match unsatisfactory performance with an award of zero to seven days of remission for the month.

We affirmed the committee's decision to award five days of earned remission for the month. As a result of our investigation, the Corrections Branch clarified the appeal process to the district director. They also reviewed and underlined the role of a transferring and receiving institution in making a remission assessment after an emergency transfer. (CS86-18)

Better winter clothes

During a cold winter period, inmates at the Kamloops Regional Correctional Centre complained to the Ombudsman that winter clothing they were given was inadequate for outside work.

The inmates said the coats did not close to the top, lightweight jackets were too thin in the wind, leather boots were cold and the woolen toques did not give enough protection to the ears and face. They said also that they did not have warm gloves and their winter underwear was in poor condition.

We referred the matter to the Division of Inspection and Standards of the Corrections Branch. Their investigation found the jackets too short and inadequate in severe cold. Subsequently, new jackets were obtained and the regional director agreed to allow the work gangs to remain inside if conditions were too severe.

To determine if weather is too severe, the director of the correctional centre agreed to consider a winter advisory service provided by the Kamloops weather station. This service provides readings which combine wind and temperature readings. The local school board uses it to decide when schools should be closed in the area.

In addition to obtaining adequate jackets from a supplier, the Corrections Branch undertook to purchase warmer rubber soled boots with a "felt-pac" insert. The Inspection and Standards Division considered the other winter issue clothing to be adequate.(CS86-19)

Sexual offender's safety

The wife of an inmate convicted for a sexual offence involving children contacted the office because she was concerned about her husband's safety in prison. He had been admitted to secure custody and was assaulted by inmates shortly afterward.

Inmates convicted of a sexual offence must normally be protected while in custody. This inmate was unaccustomed to dealing with the criminal element and was completely naive in terms of prison customs. He talked openly about his charges to other inmates, placing himself in danger of assault.

After an assault, the inmate was placed in segregated cells where he was held pending transfer. His wife was concerned about the transfer arrangements by sheriffs.

Our office immediately contacted the sheriff's department. The sheriff confirmed that the man was to be transferred the next day with a group of inmates. He had not noted the inmate needed protection. The sheriff agreed to transfer the inmate under protection in a separate compartment of a vehicle in which only protective custody inmates would ride.

By drawing this matter to the attention of the sheriff, an extremely dangerous situation was avoided. (CS86-21)

Phone policy changed

A youth in a forest camp complained that he was permitted only one personal telephone call per week and that business calls could not be made in privacy.

We discussed the issue of the limited number of phone calls with the director. The forest camp administration decided to alter the policy to read:

Phone Calls: (Personal) — Residents may make one free phone call to notify their families of their whereabouts. Generally, further calls are allowed three times per week on a collect basis, at the discretion of the shift senior youth supervisor. These calls may be monitored by staff and will be dialed by staff.

(Business) — Calls to legal counsel, government representatives, the ombudsman and a social worker or probation officer are granted free of charge. These must be made during normal business hours (9 A.M. to 4 P.m.) at the discretion of the senior youth supervisor and the program support officer. Calls to lawyers, government representatives and the ombudsman will not be monitored by staff, but all calls will be dialed by staff.

Once we were assured by camp officials that privacy would be provided for calls made to our office, we were able to close this case as resolved. (CS86-22)

Keeping track of funds

We received a number of complaints from youths transferred to various wilderness camps from the Willingdon Youth Detention Centre or Holly Cottage, that their personal funds and earned monies had not been forwarded to them.

Upon investigation, we learned from the directors of these camps that this was indeed a recurring problem, and one which also caused them concern since the youths were constantly asking camp staff about the transfer of their funds. We brought this matter to the attention of the Willingdon Youth Detention Centre.

We learned that the accounts department at Willingdon was usually only verbally informed, if at all, of the names of youths being transferred. Hence, no written record existed at the accounts department identifying the youths being transferred and to which camp. Moreover, the accounts department was temporarily lacking a full-time clerk.

When this problem was identified, the detention centre undertook to notify the accounts office of transfers by memo. A new full-time accounts clerk was to start work in February 1986, and it was expected this would end the transfer of funds problem. In the months following the change, there were no further complaints on this issue.(CS86-23)

Inmate phones overseas

A woman was serving a jail sentence in B.C. but her home was many thousands of miles away on another continent. She had no friends or family anywhere in Canada.

She complained to the Ombudsman's office — with the help of other residents because she was still

having some difficulty with English — that she had been permitted only one telephone call per month to her family overseas.

The families of the vast majority of inmates live in this province, so the cost of keeping in contact is relatively low. This resident had enough money in her institutional account, but no one appeared to know how to arrange for her to pay for additional calls.

Once the problem was brought to the attention of senior staff, the necessary bookkeeping was done quickly, permitting this resident to keep in regular touch with her family. (CS86-24)

After meal lock-up halted

A resident of one unit at Willingdon Youth Detention Centre complained that a particular staff member was routinely locking all residents in their rooms for a 15 or 30 minute period after each meal.

As soon as we brought this to the attention of the institution's deputy director, the practice was stopped and all staff were reminded that lock-up after meals is contrary to policy. (CS86-25)

Securing personal effects

Inmates accept responsibility for personal items they retain in their possession while in custody. However, incidents arise within the prison which prevent the inmate from retaining control of his personal effects in his cell. For example, when an inmate attends a disciplinary panel he may be sent directly to a segregation cell for a period of up to 15 days. When this happens, the inmate is not able to protect the belongings in his cell and other inmates may remove items of value.

After investigating a number of complaints, all of them variations on this theme, we recommended that the Lower Mainland Regional Correctional Centre advise the inmate prior to the disciplinary hearing that he may request to have his cell locked prior to the hearing. The responsible inmate can then secure his effects before going to court. At first, officers felt that this may represent an admission of guilt. Inmates have not viewed this procedure in the same way and found the practice, since implementation, useful in guarding their effects. We felt that this practice would substantially reduce the number of complaints regarding the loss of personal effects from an inmate's cell. (CS86-26)

Breach of confidentiality alleged

An inmate contacted us when other inmates at a remote camp threatened to harm him after they read about him in a newspaper report of the trial. The inmate was ultimately forced to leave the camp.

The inmate suggested that the probation officer who had prepared a pre-sentence report was responsible for giving the newspaper the information on his background. The inmate came to this conclusion because no reporter had been in court when sentence was decided.

We investigated this serious allegation that a probation officer had breached confidentiality. Upon investigation, however, we found the probation officer was not responsible for the material published in the newspaper and had not breached confidentiality. We concluded the problem arose from the different ways oral and written pre-sentence reports are handled.

In this case, an oral pre-sentence report was presented in open court and thereby became public information. Sentencing was completed at a separate hearing, because the judge had requested more information. A reporter was present for the oral report but not the actual sentencing.

A written pre-sentence report is made available to the defendant's counsel prior to its presentation in court. Sensitive or prejudicial content may lead the defence counsel to request the court to ban the publication. Often the written pre-sentence report is not read by anyone other than the judge, prosecutor and defence counsel. The only sections of the report which are mentioned in court are those that are contentious.

On the other hand, an oral pre-sentence report is presented in court and is heard for the first time by all participants. The defendant or his counsel has no prior knowledge of what will be presented in court and is not able to know whether sensitive or prejudicial material will be voiced. Additionally, the oral pre-sentence report becomes a part of the transcript and is therefore public knowledge and available for publication unless a ban has been ordered. Many pre-sentence reports are given orally because the information required is very restricted or minimal, time factors do not permit a written report or the court is seeking additional specific information.

The Corrections Branch accepted our proposal that defendants interviewed in the course of an investigation by a probation officer should be made aware of whether the report would be presented in oral or written form to the court, and the defendant would also be advised that an oral report is public information unless the court orders a ban on publication. We also proposed that defendants or their counsel be given advance notice of the content of oral pre-sentence reports where the information may be prejudicial or sensitive. In accepting both of these proposals, the Corrections Branch has decreased the

procedural unfairness which resulted inadvertently from the probation officer's role in the court and the presentation of oral reports. (CS86-216)

Safety of youths paramount

When we received a second complaint of a youth being assaulted during the admission procedures at Willingdon Youth Detention Centre, we raised our concern with the director that the practice of leaving unsupervised residents in a holding area warranted further consideration. We were not able to substantiate the youth's allegation that he was beaten by other residents in the holding cell. He could not identify his assailants.

We asked the director to monitor this potential danger spot more closely. The file was held open for four months. During this time, no further significant incidents occurred. We decided to conclude our investigation when we were satisfied that an admissions officer was present at all times when residents were being admitted to the centre. The cell itself can now be observed from both ends through a plexiglass window and the doorway. Residents who need more supervision or who are subject to assault from other inmate residents, remain directly under the officer's observation and would not be placed in the holding cell with other residents.

The safety of youth is of paramount importance and no resident should be victimized by other residents. (CS 86-27)

Singled out for search

A woman regularly visited her common-law husband, an admitted drug addict, while he was waiting trial on charges of armed robbery and sexual assault. During each of four visits, she felt singled out for a thorough search. During one search in which she had to remove all her clothes, she became upset with the conduct of the search by the guards and made abusive comments to a female guard. Later the woman apologized to the guard.

This woman was told she would be strip searched every time she visited. She was not given a reason. When she later complained to the Ombudsman's office, she said that during the search she was left standing naked while the officers went through her clothes.

We spoke to a senior officer at the centre about these incidents. While we recognized that an institution must take precautions to prevent drugs or contraband from entering, it is not necessary to impose this security in a manner which is embarrassing or degrading to the visitor. We felt that the strip search procedures were unnecessarily crude.

As a result, the institutional authorities readily agreed to provide a gown or towel to the person being searched.

The complainant had been misinformed about being searched on every visit. An officer must have reason to believe that the person has committed, may be about to commit, or is committing an offence before a search is conducted. Obviously, this cannot be determined beforehand for an indefinite period. Future visits were conducted without incident of any kind. We considered this complaint resolved by the institution. (CS86-217)

Clocks finally arrive

While in custody at a youth camp, a young complainant had purchased the necessary materials and had made three burl clocks. He took them with him when he was transferred to the Willingdon Youth Detention Centre immediately prior to his discharge from custody.

He told us that staff at Willingdon had agreed to parcel up the clocks and send them to his parents in northern B.C., but when they had not arrived after a month, the youth called our office for assistance. We discovered that the parcel had been sent, by bus, about three weeks after the resident's discharge. They were eventually received in good condition.

The same resident also complained that Willingdon staff had told him they were not holding any money in his name even though he knew there were funds in his account when he left the camp. Once we had established that the money had been transferred to Willingdon from the camp before the resident was discharged, staff at Willingdon rechecked their records. The money was traced and a cheque was sent to the complainant immediately.(CS86-28)

Wake up policy changed

Some people can sleep for many hours at a stretch, given the opportunity. Others, accustomed to rising at an early hour all through the week, find it impossible to sleep in on Sunday.

Two early-rising inmates at Willingdon YDC complained that all residents were locked in their rooms or dormitories until 10:30 Sunday morning. We asked if the Sunday morning routine could be made more flexible. At first, the institution was reluctant to make the change, but finally agreed to put the question to the residents' advisory committee and two staff committees. About two months passed before the change went into effect, but now the layabeds

may continue to sleep until 10:30 while the others may leave their rooms any time after 7 a.m.(CS86-29)

Ring not found

When youth transfer from one facility to another, personal possessions sometimes go astray.

One youth complained to us that a black ski-jacket and a gold ring were not forwarded when he transferred. The jacket was noted on his personal effects sheet, but was supposedly signed out by the youth along with the rest of his belongings at the time of the move. At our prompting, however, staff at the originating institution conducted a search for these goods, and turned up the ski jacket. The complainant's name was on a lift ticket attached to the pocket. The jacket was promptly forwarded to the youth.

We were not so fortunate in locating the ring. There was no mention of it on the youth's personal effects sheet. If he had the ring with him on entering the original facility, it would normally be registered and placed in the safe. A check of the safe was made to establish if the ring was in the safe without registry but it was not.(CS86-30)

Mentally ill prisoners

During the course of an investigation, we became concerned about the plight of mentally ill prisoners who cannot be transferred immediately to a mental health facility for treatment. Once a prisoner under sentence has been certified by two doctors as mentally ill and in need of care 'for his own protection or welfare or for the protection of others,' in accordance with the terms of the *Mental Health Act*, he or she is usually transferred to the Forensic Psychiatric Institute, where secure custody and treatment is provided.

However, delays of several days often occur in the transfer because bed space at FPI is limited. Longer delays may occur when the inmate has been remanded for trial. In this case, he or she must be returned to court for an order for the prisoner to be committed for treatment.

We discovered that, unless they consented to treatment, mentally ill prisoners were, for the most part, not receiving any treatment during the time between certification and admission to a hospital. We believed administering sedatives during the waiting period could sometimes prevent possible injury to a mentally-ill inmate and to other prisoners and staff.

After we discussed the issue with the director of medical services for the Corrections Branch, he recirculated to all correctional centres a legal opinion which indicates that treatment may be commenced prior to transfer to a mental health facility. This recommendation had been adopted for use by the branch some months earlier, but it appeared that some of the centres were still not providing treatment.

Sending the reminder alleviated the situation to some extent, but it did nothing to solve the problem of delays in admitting mentally ill prisoners to a mental health facility. Nevertheless, we decided to take no further action when we were assured that an interministerial group was working on the problem. (CS86-31)

Medical concerns

A high proportion of complaints from inmates concern medical issues. An inmate's attempt to contact a medical practitioner and to obtain a second medical opinion must overcome numerous institutional hurdles. They include the institution's restriction on the use of the telephone, confinement which prevents the inmate from going to the doctor's office, the inmate's medical insurance which may have been allowed to lapse, the waiting period when the community doctor must coordinate with the institutional doctor, and the inmate's fear that the institutional doctor will refuse to treat him or may be offended because the inmate wants a second opinion.

The Corrections Branch recognizes its obligation to provide medical care. Secure institutions provide regular medical clinics where inmates may talk to a medical officer and obtain treatment. The Ombudsman does not investigate the professional conduct or medical decisions of the medical officer. However, the Ombudsman's office will examine the administrative context and policies which have been developed to provide medical services to inmates.

A particularly difficult problem arises when a person enters the prison while receiving ongoing medical treatment in the community. This means, initially, a change of doctors and often a change of prescriptive medications. The institutional doctor may perceive treatment therapies differently, and have limited admission privileges to hospitals in the community. As most inmates from secure correctional institutions are required to be under escort by officers while in hospital, every hospital admission imposes additional costs upon the institution. When admission decisions are made, the needs of the inmate are weighed against the cost to the institution.

One inmate complained about the lack of medical treatment provided by the Corrections Branch. He had pain associated with his upper chest and back, numbness in his hands and arms, and swelling in the neck. He had received medical services from six doctors in the community prior to his arrest. Howev-

er, doctors in the community did not admit patients to the same hospital to which inmates were admitted from the secure centre.

After examination, we concluded that the Corrections Branch was providing adequate medical care. The inmate's condition was not clear and further tests were required. We felt that the instititional physician was able to provide a coordinating role with community doctors and the inmate's present needs. The Corrections Branch was keeping the inmate in the institution's health care centre while in custody and continuing tests to diagnose the patient's condition by sending him to Vancouver General Hospital.

We believe that an inmate who is admitted to custody while receiving treatment from a community doctor has the right not to have the treatment changed without consultation between the previous doctor and the institutional health care officers. Although custody restricts an inmate's access to the community services, health care professionals within the Corrections Branch can contact community doctors and services to reduce the negative impact of incarceration on medical services.(CS86-32)

Mishandling of letters

Letters and correspondence connect an inmate to the community at large. The Corrections Branch pays for up to seven letters per week per inmate.

However, this connection highlights an inmate's dependency on corrections officers. When an inmate drafts a letter, he places his personal feelings in the guard's hands and trusts that the guard, who reads the letters, will not expose those feelings or fail to pass the letter through the mail system because of personal animosity or careless indifference.

An inmate at the Lower Mainland Regional Correctional Centre felt that his letters had been mishandled. He complained to the Ombudsman's office when he was not allowed to see the institution's record of letters he had mailed. He also complained that he was harassed and abused because he contacted the Ombudsman's office.

After investigation, we supported most of this inmate's complaints. There were no grounds to deny the inmate an opportunity to see the mail record. In fact, part of it had been shown to him before his complaint was raised.

We also found that some correspondence and books had been withheld from him, contrary to the Correctional Centre Rules and Regulations. And we found the mail records could not be justified by the simplest of audits. Unexplained discrepancies were evident.

We concluded that there was no supporting evidence that he had been harassed because he contacted our office. Instead, we found that his mail registry card included some derogatory comments which had been allowed to remain on the cards. We found these comments highly offensive and improper, and concluded they were part of the general pattern of harassment directed toward the inmate.

We sent the results of our investigation to the Commissioner of Corrections and the branch agreed with our proposed recommendations. The inmate was given personal access to the mail registry and the correspondence which had been withheld was returned. We also suggested that the institution pay postage for the inmate to rewrite some mail which had been mixed up in the reading or posting. We proposed that the officer in charge of centre hall review mail procedures and policies. Finally, we asked that the Director inform the inmate of the steps taken to remove the abusive terms on his mail cards and to inform him of any other action which the director may take to determine the officer or officers responsible. (CS86-33)

Right to choose purchase

A young inmate of a regional correctional centre had prevailed upon the prison chaplain to agree to purchase and send flowers to the inmate's fiancee. He complained to us when a senior correctional officer refused to release money from the prisoner's personal funds to pay for the bouquet.

The officer's response to our enquiry was that, if the expenditure were permitted, the inmate would have almost nothing left for personal items, most particularly for cigarettes. In our view, the correctional centre has no right to prevent an inmate from spending his or her own money on perfectly legal goods or services, nor any duty to forestall unwise extravagance. After some discussion, the necessary funds were released.(CS86-34)

Maintaining the dignity of the offender has to be a key concern of our correctional system. Often, it is the resident's lack of self-esteem that has contributed, at least in part, to the events which ended in incarceration. When young offenders are taken out into the community for various activities, it is therefore important that undue attention is not drawn to their presence. The following two complaints involving the use of Ministry vehicles provide views of this issue from different angles.

Youths didn't want to be noticed

A number of youths at a forest camp complained that when they went into the community to attend

recreational activities, people knew they were from the prison camp because of the distinctive Attorney General's Ministry decals on the vehicles which transported them. The youths involved found this experience to be highly embarrassing.

We suggested to the Corrections Branch that removing the decals would aid in the normalization process encouraged by the *Young Offenders Act*. We also contended removal would be consistent with the Corrections Branch's own policy which stipulated that "youths shall be transported in such a manner so as not to attract public attention."

Initially, the branch argued that the overall use of its vehicles required they be identified with decals. But our office pressed the case for anonimity in community outings, pointing out that the practice in certain other Canadian jurisdictions was to transport youths for recreational purposes in unmarked vehicles. We proposed that markings be left on the vehicle to identify it sufficiently for use in an emergency situation but that large decals be removed.

The Commissioner of Corrections reviewed the issue with branch managers a second time and they agreed that the Corrections Branch would request decals be removed from front car door panels, and not just on vehicles transporting youths to community events but also on vehicles transporting adult offenders to such activities. As the commissioner rightly pointed out, the same concerns about protecting offenders' privacy and treating them with dignity applied not only to youths but to adult offenders as well.(CS86-35)

Member of public noticed, but. . .

A man told the Ombudsman's office he had seen a Ministry of Attorney General vehicle at a MacDonald's restaurant on a Sunday with what appeared to be the driver's family inside. The caller felt this was an abuse of taxpayers' money.

Our investigation found that the vehicle was on a Ministry-sponsored outing and that all the people in the car were either staff or residents of a youth corrections centre. Staff were pleased to hear that the group looked like a regular family, as one of their aims is to make the youngsters feel as if they are part of mainstream society. (CS86-36)

Visiting times expanded

A resident of a youth containment facility complained that visiting days were limited to one day per week. At another centre where he had previously stayed, visits were permitted three times per week.

The director of the centre explained to us that the youth centre had previously been used by adults and, at that time, visits were allowed just once weekly. The administration simply continued the policy when the facility was converted into a youth centre. However, he was not averse to expanding visiting times as one more way of constructively occupying the time of his youthful charges.(CS86-37)

Informer fears for safety

During a visit by an Ombudsman officer to a forest camp for young offenders, one resident, due shortly for release, told the officer he feared for his safety if he returned to the town where he had been sentenced. He believed he had been labelled a 'rat' — an informer — and certain individuals might make his return most uncomfortable. He also insisted that there was nothing for him in that town and the friends he did have there would not be a positive influence on him. He had relatives in another city in another part of the province and could possibly obtain work there. However, under his release plan, he was destined for a youth facility in the town where he had committed his crime and had been sentenced.

We discussed the issue with the youth's social worker and probation officer. The probation officer was in favour of the move to the second city. Now that there appeared to be a good reason for the shift in destination, the social worker who previously objected went along with the revised plan also. By obtaining official sanction for the destination change, the youth was spared any difficulty of breaching his release orders. (CS86-40)

A question of style

While visiting a youth camp, an Ombudsman officer encountered a resident who claimed to have been handled roughly by a staff person. The youth said his hair had been pulled and he had been threatened, sworn at, yelled at and challenged to a fight by the staff person in question.

The issue was raised with the camp director who proceeded to conduct an official inquiry, which received statements from all participants and witnesses involved in this episode. The inquiry determined there was insufficient evidence to sustain an allegation of physical abuse. The inquiry found that the officer had used minimal force to diffuse a potentially-dangerous incident. However, the officer was cautioned about his personal style in working with youth, his loud voice, challenging language and intimidating mannerism. More important, the camp director undertook the development of a code of ethics — a statement governing the relationship

between staff and residents. The statement was to assist staff in maintaining an objective approach in their dealings with residents and to help them avoid a confrontive or reactive style while handling problem situations.

We concurred with the director's findings and lauded his undertaking to deal with the issue on a far-reaching and more systematic basis. (CS86-42)

Price paid for spending spree

A person in custody complained to the Ombudsman when his weekly wages of $21 were not being credited to his trust account. The result was he was unable to buy some shampoo and other toiletries from the institution's canteen just before Christmas.

Our investigation revealed the problem arose from a clerical mistake. The inmate said he had expected money from his parents to buy winter boots and bus fare. When $280 suddenly appeared on his trust account statement, he went on a shopping spree inside the institution and purchased hobby work from the inmate canteen list. But the money had been mistakenly placed in the complainant's account when another person transferred into the centre. The Correctional Centre immediately stopped the payments to the canteen and orders placed by the resident on his windfall. Still short $96, the centre began deducting all of the inmate's wages.

After discussing the matter with our office, the authorities agreed to meet with the unhappy resident and come to a mutually-acceptable deduction each week until the total amount was paid. (CS86-43)

Ministry of Consumer and Corporate Affairs

The Ministry has a wide-ranging mandate. Under the consumer title, the Ministry is reponsible for licensing Motor Dealers and travel service agencies, the distribution and resale of liquor, and the provisions of services in reponse to landlord-tenant disputes.

Inquiries	3
Declined, withdrawn, discontinued	33
Resolved: corrected during investigation	13
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	24
Total number of cases closed	73
Number of cases open December 31, 1986	13

Car seized; loan still to pay

A woman bought a used car from a dealer with the help of a bank loan. Some time later, the car was seized by the sheriff because it was found to be a stolen vehicle. This woman was left owing money to the bank for a car that was taken away from her. Meanwhile, the dealership had gone out of business.

She complained to the Ombudsman's office and asserted that the Ministry of Consumer and Corporate Affairs should help pay for her losses and legal costs because existing legislation provided insufficient safeguards for consumers in her situation. The current safeguards include: a search of Central Registry for liens; a bond posted by the dealer; and the right of the injured party to make a claim against the dealer. However, in this case, the dealer had gone out of business.

Unfortunately, this consumer's complaint had to be found as unsubstantiated despite her dilemma. There is no statutory provision for the Ministry to assume consumers' legal costs or losses. However, senior Ministry officials indicated that they were considering increasing the bonds which all car dealers must post in order to set up business. In this case, a small bond had been recovered by the complainant but it went to pay outstanding legal fees. Failing implementation of this new measure, a motor vehicle compensation plan could be proposed.

The complainant, while unhappy with her particular situation, was encouraged at the prospect of improved legislation, since it might prevent others from suffering as she had done. (CS86-44)

Unusual requirements

Most vacant public service positions are filled through a competition process. Vacancies are advertised in the publication 'Postings'. In the fall of 1986, a competition for a Building Security Officer for the Liquor Distribution Branch of the Ministry of Consumer and Corporate Affairs was advertised. The advertisement informed prospective candidates that all applicants were subject to security clearance including Canadian Police Information Centre (CPIC) and credit checks.

We phoned the Director of Personnel of the Ministry and asked for an explanation for this unusual requirement. Although we never did find out about the rationale employed by the Liquor Distribution Branch, we were informed that the vacancy would once more be advertised, this time without any unusual requirements. We appreciated the Ministry's cooperation. (CS86-45)

Pub licence dispute

A hotel owner in a small community complained that it was unfair of the Ministry of Consumer and Corporate Affairs to approve an application for a Class D Neighbourhood Pub licence within the same community. The premises were in fact approximately one-quarter mile apart.

Applicable regulations called for a distance of one mile between such premises and the initial application was rejected on the strength of that regulation. Upon appeal, the director of the Liquor Control and Licensing Branch overruled the earlier decision using his legal discretion to relax rules when public interest favoured it.

Our investigation found that a referendum favoured the application by a substantial percentage. Furthermore, the Ministry's assessment was that the pub would cater to clientele not frequenting the existing hotel. Evaluating this overall public interest, the director gave the approval. Our separate analysis of the facts led us to the conclusion the director's discretion had been exercised with reason and fairness. (CS86-46)

Residential Tenancy Branch

We receive few complaints against the Residential Tenancy Branch. The branch employs arbitrators to resolve disputes between landlords and tenants, ei-

ther of whom can apply to have a dispute heard. Most of the complaints we receive concern the merits of an arbitrator's decision. Once a decision has been rendered, the only form of appeal available is the rather complex avenue of judicial review. The arbitrator lacks the power to change his or her own decision; that may only be done by the court. Accordingly, we do not investigate the merits of a decision but will advise complainants of their judicial review rights and offer suggestions on how to pursue those rights.

Arbitrator's decision questioned

A woman contacted us, claiming that an arbitrator of the Residential Tenancy Branch failed to conduct the proper investigation into her complaint against her landlord.

She had complained to the branch, among other things, that her apartment was infested with ants. An arbitrator had contacted a Public Health Inspector who had visited the premises. In his decision letter, the arbitator reported on his conversation with the inspector, saying that the inspector had found no ants at all. The arbitrator decided that the landlord had not failed in his duty to maintain the premises.

The complainant told us the inspector had indeed found ants and that he had so advised the arbitrator. While we could not interfere with the arbitrator's decision, we thought it worthwhile to investigate what was really an allegation of misconduct on the part of the arbitrator.

We contacted the public health inspector involved, who stated that the arbitrator had quoted him incorrectly. He said that he had seen ants in a cookie box but nowhere else and told the arbitrator what he saw. He also told the arbitrator he did not rule out the possibility that more ants were in the apartment, but that he was aware of an ant problem in the building in the past that had been dealt with by a reliable pest control agency. He was satisfied at the time of the inspection that there was no "infestation."

We decided not to contact the arbitrator in an attempt to learn whether or not he would stand behind the words which he had attributed to the inspector in light of what we had learned. We were satisfied that the arbitrator had not misconducted himself by falsely misrepresenting the inspector's evidence. If he made an error, it was in his paraphrase of that evidence. There was no doubt that he had come to the correct conclusion on the matter. (CS86-47)

Ministry of Education

We are pleased to report that in 1986, as in previous years, the Ministry of Education staff have provided a high level of cooperation with our office. There was a reorganization of the Ministry's programs in 1986 with some areas previously administered by the Ministry of Education moving to the Ministry of Post-Secondary Education (now known as the Ministry of Advanced Education and Job Training). For the purposes of this report, we will report all programs which the Ministry of Education governed January 1, 1986, as belonging to that Ministry.

Our office receives numerous calls about matters of education which only peripherally involve the Ministry. In these areas, though the Ministry may have some overall responsibility, it has no day-to-day control. This can be confusing for the public but wherever we have been involved, the Ministry has tried to assist or to enlist the cooperation of the local School Board actually responsible.

One example of how confusing it can get is the topic of school busing. Under the governing legislation, the *School Act*, the board of a school district may, with approval of the Ministry, provide bus service for pupils residing in the district who attend a school teaching the approved curriculum. The Ministry of Education does have rules regarding how far a pupil can reasonably be expected to walk to catch the bus, if the local board decided to provide bus service. The cost of operating the bus service is shared between the local board and the Ministry. The service is paid for on a fee for the bus, not on a per child basis. The only time that a per head calculation is used is if special assistance is provided by the Ministry, for example, if there are insufficent children to set up a route, or if the closest bus stop is a considerable distance from the child's home. The Ministry may, in those circumstances, pay the parents to transport the child to the nearest bus stop. Parents of special needs children may also be provided with a special transportation allowance to take the child directly from home to school.

We have had enquiries from people whose children are enrolled in alternative schools, that is, schools which don't teach the Ministry-approved curriculum. The callers have wanted to know if their children are entitled to travel on school buses. The Ministry policy is to encourage local school boards to transport these children on their scheduled routes if there is space available on the buses. School buses are primarily provided to transport children enrolled in public schools, but if there is space available, children in private schools may also take the bus. Special bus routes to private schools are not the responsibility of the Ministry.

Inquiries	3
Declined, withdrawn, discontinued	3
Resolved: corrected during investigation	2
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	5
Total number of cases closed	13
Number of cases open December 31, 1986	2

Student loan information

A man complained that the college he attended had provided incorrect information about maintaining interest-free status for his B.C. Student Loan. He claimed that he had been told that negotiation of his Canada Student Loan in September would automatically re-establish his interest-free status for his B.C. Student Loan. This was not the case according to the bank giving the B.C. Student Loan. The bank required a certificate confirming continuing enrolment. Since the man hadn't submitted this document, his B.C. Student Loan became repayable in December. When notified by the bank, he obtained and submitted the required certificate, but was still assessed interest for the month of December.

The problem arose from confusion about the necessity of submitting the certificate. After inquiries from our office, the college agreed to change its policy and routinely instruct students to submit a certificate to their banks in order to maintain their interest-free status. The Ministry of Post-Secondary Education's B.C. Student Assistance Program (BCSAP), which approves B.C. Student Loans, agreed to produce a clear and comprehensive information package for both students and financial award officers. Finally, the bank agreed to defer payment of the interest charges in this particular case until the total loan becomes payable upon graduation.(CS86-48)

Loan rejection proper

A man complained that his application for a Canada Student Loan for the 1986/87 academic year had been rejected by the Ministry's B.C. Student Assistance Program (BCSAP). He had pursued the matter through the appeal process, but to no avail.

Our investigation revealed that BCSAP had made its decision based on the man's past history. Our complainant had been funded to attend a small regional college from September 1981 to April 1985. However, he failed to submit sufficient work and was

deemed to have technically withdrawn from each of these semesters. He had earned credit for only one semester out of the last eleven semesters. BCSAP's policy states that withdrawal from course work three or four times over the span of three or four years results in ineligibility for further loans until the student has successfully completed two semesters as a full time student. This seems reasonable, given the intention of the program to fund serious students in need of financial assistance.

Our investigation also found that this man had violated the terms of assistance on his loan application by attending a university in eastern Canada while funded for a B.C. regional college. He failed to notify either the college or BCSAP.

Lastly, there was a concern about possible undeclared sources of income. The man had travelled extensively and reported no income at all, during either the summer or the school year.

We felt that the Ministry had acted properly in denying further funding until the man had proven his commitment by completing two semesters satisfactorily. (CS86-49)

Maintaining interest-free status

A woman complained that she was the victim of misinformation provided by the Ministry to her college. She claimed that staff at the college had told her that when she submitted a form to her bank, re-establishing interest-free status on her Canada Student Loan, the bank would automatically re-establish interest-free status on her B.C Student Loan. This was not the case as further information was required. Her failure to provide it resulted in the bank declaring her loan in default and referring it to the Ministry for payment. The woman was now ineligible for further funding, even though she needed a loan to complete her studies.

The problem was resolved when the Ministry agreed to accept $30 per month as payment on the loan for May, June, July and August. Thus, the account was no longer delinquent and so the women would be eligible for a new B.C. Student Loan in the fall. Further, the Ministry produced a new clearer policy and information package for both students and financial award officers, stressing the need to submit all necessary documentation to lending institutions. (CS86-50)

Ministry of Environment

Involvement with the Ministry of Environment continues to centre on matters of land erosion, human and industrial waste disposal, the use of surface water and wildlife management issues. Ministry personnel are most cooperative and strive to assist investigations in order to arrive at resolutions in areas where multiple interests prevail.

A number of complaints were received in 1986 regarding the Environmental Appeal Board and its consideration of objections to herbicide and pesticide licences. Due to the recurring nature of these complaints, the common issues will be addressed in a systems study in 1987.

Inquiries	2
Declined, withdrawn, discontinued	26
Resolved: corrected during investigation	12
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	34
Total number of cases closed	74
Number of cases open December 31, 1986	30

Just the bear facts

A resident of a small community complained that the Ministry of Environment's Conservation Officer Service policy was to destroy marauding bears. The resident, voicing compassion for wildlife, felt it would be better to tranquilize the animals and relocate them elsewhere.

The centre of attention in this case was a brown-colored bear, believed to be either a 'cinnamon' black bear or a grizzly. It had re-appeared frequently in the complainant's area over a two-week period. It had taken to sleeping under porches. On one occasion, a man narrowly escaped this bear's attack, reaching his home's front door with the bear in close pursuit.

The Ministry's policy is based on studies and experience. Of paramount importance is human safety. Relocation may, on occasion, be advisable if it does not simply relocate the problem.

When the policy was explained to the complainant in greater detail, she tended to agree with it. Depending upon the bear's choice of residence, its fate lies within its own behaviour. In contrast with her initial position, the complainant's final comment was that a neighbour ate bear meat sausages and she was looking forward to tasting this delicacy. (CS86-51)

Who pays for spots?

A complaint was made about a spontaneous, explosive type of burn in a smoke stack at a local refinery. It had resulted in the complainant's newly-painted house being coated with an oily substance. Although the company had scrubbed the house down a few weeks later, brown spots had appeared afterwards for which the homeowner held the company responsible.

We made inquiries with the Waste Management Branch and one of its local officers was asked for his help in mediating between the plant and the complainant. He received the agreement of the two parties that they would abide by the opinion of an independent painter. When the latter said the brown spots had been caused by the lack of a primer in the original painting process, the complainant signed a waiver with the refinery's insurance agent and agreed not to hold the company responsible. (CS86-52)

Standards reduced?

A hunting instructor complained that standards in the Conservation and Outdoor Recreation Education (CORE) program had been reduced to an unacceptable level when the Ministry gave up certain responsibilities by transferring service delivery to the Open Learning Institute and the B.C. Federation of Shooting Sports.

Our inquiries revealed that a number of the complainant's concerns had already been dealt with. One example was with delays experienced under the new system in marking exams and getting results back to students. These would be avoided in future by use of a computer scanner to grade electronically. Other proposals for improvement had been made, including improvement of exam papers and widening the curriculum's scope. All of this was clarified with the complainant. We found that the Ministry was delivering the curriculum required by the *Wildlife Act* and Regulations and our investigation ceased. (CS86-53)

Dioxin from burning feared

A group of Kaslo area residents complained when the Ministry gave permission to the local mill to conduct an open air burning of wood waste contaminated by pentachlorophenol. They feared that dioxin levels resulting from the burning process would be dangerous to the public's health.

Our investigation revealed that mill officials had cooperated when the Waste Management Branch became aware of the contamination. The mill had voluntarily ceased using the chemical for preserving wood for export, even though it was federally-approved. About 95 per cent of the treated product had been shipped from the premises for sale and mill officials had also removed about half of the contaminated wood waste to a land fill. What remained was to be burned.

Studies and calculations done by a chemist and a qualified meteorologist on staff with the branch, using the most adverse conditions and shortest burning time (which would result in a higher dioxin concentration) showed projected fallout was expected to be well within currently accepted standards of safety levels. In addition, the Ministry held two public hearings in the area to listen to local residents' concerns and to explain their findings. In future, the branch would also continue to keep abreast of further research, including results of the Council of Forest Industries (COFI) studies. The Ministry was therefore found to have acted correctly and the investigation was concluded.(CS86-218)

Falcon export outside jurisdiction

A falcon-breeder complained that the Wildlife Branch was refusing to issue an export permit to him until his customer had obtained a valid import permit from U.S. authorities.

The Convention on International Trade in Endangered Species (CITES) of wild fauna and flora allows for certain birds to be exported without such U.S. documentation. However, the provincial Wildlife Branch was given recent legal direction from Canadian federal CITES authorities that the *Import Export Permit Act* plus U.S. requirements for permits were to be followed. The investigation was therefore closed as non-substantiated.

While federal matters are outside the Ombudsman's jurisdiction, we contacted the breeder's MP to see if he could be of assistance to his constituent. He, in turn, wrote to the federal Minister of Environment. (CS86-54)

House sale solves problem

A property owner complained that she had been refused permission to use sandbags to retain the sides of a ditch intersecting her land. She wanted to prevent further erosion due to heavy waterflows during spring run-off and rains. She was also concerned that someone might fall into the ditch.

Water Management and Fisheries personnel inspected the site along with the complainant and an Ombudsman officer. With certain restrictions, sandbagging or installation of a concrete culvert could be permitted. While the owner was still considering price factors and other implications, the house was sold. The matter was closed as resolved. (CS86-55)

Paying water bill, the hard way

A water user said that he had sent his yearly remittance for domestic water to the Community Water Supply Section of the Ministry of Environment when he was out of the country. His complaint was that he had not received any receipt, nor had his cheque been cashed.

Enquiries revealed that, while the Ministry section had no direct involvement between this man and the water utility from which he bought the water, it had forwarded his cheque on to the company as a service to the complainant. The manager of the section recognized the man's problem in obtaining a receipt and decided to correspond with the utility to point out its obligations to cash its customer's cheque and issue a receipt. (CS86-56)

Fish ladder scrapped

During 1985, farmers in the Inonoaklin Valley complained to the Ombudsman's office about a proposed fish ladder that would provide fish from the Arrow Lakes access to the Inonoaklin River to spawn.The Arrow Lakes used to be the spawning grounds but were flooded by construction of the Keenleyside Dam in the 1960s. The Ministry of Environment's plan for a fish ladder was aimed at replacing these spawning areas but there was concern in the agricultural community that the waters of the Inonoaklin River barely met existing needs for irrigation and livestock watering. Other options for fish habitat development existed and, while the fish ladder proposal was not finalized, the Ombudsman's office did suggest that answers to the farming community's questions were still necessary. The ministries of Agriculture and Environment agreed to study the proposal further and the case was reported to this point in the Ombudsman's last annual report.Further study by the two ministries was completed in 1986 and has been made public. The results are that the proposed fish ladder has been shelved indefinitely and alternative areas will be developed for enhancement of fish habitat. In addition, approval has been given for increased water for agricultural irrigation. These decisions address the concerns that had been put forth by the Ombudsman's office. They also reflect the value of an independent look at issues where the competing interests of two ministries are involved.(CS86-57)

Ministry of Finance

As in previous years, the majority of complaints against this Ministry concern two branches: the Consumer Taxation Branch, which administers the *Social Service Tax Act* (commonly known as sales tax); and the Real Property Taxation Branch, which administers the *Taxation (Rural Area) Act*. The case summaries contain examples of each.

Inquiries	5
Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	14
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	19
Total number of cases closed	45
Number of cases open December 31, 1986	6

No need to report tax on form

A business person complained to the Ombudsman's office when the Ministry of Finance's Consumer Taxation Branch penalized his business for failing to remit sales tax it collected.

The problem arose because the tax return form sent out by the Ministry to all vendors was not received by the complainant. The complainant was waiting to receive the tax return form before sending in the sales tax he had collected. Therefore, his tax return became late. The Ministry of Finance sent out two delinquency notices and received no response. It then assessed the business as owing an amount of unremitted taxes based on its previous tax returns.

When he received the assessment notice, the complainant immediately sent the actual amount of taxes owed, which was much greater than the amount assessed. But he told our office he continued to be billed for the assessed unremitted taxes.

The complainant had actually misunderstood this bill. When the Ministry received payment, the assessment was cancelled. But because the payment was late, the complainant was charged a penalty and interest. This was the amount for which the Ministry continued to bill him.

Once the complainant understood the reason for the bill, he objected to it, asserting it was the Ministry's fault for failing to send him the tax return form. The Ministry of Finance told us that the form is sent out for the convenience of the vendor but that the form is not required to be used.

The Ministry of Finance automatically charges a penalty and interest if an assessment of unremitted taxes has occurred. The company can appeal the charge and the Ministry has the option of forgiving it. The complainant had always submitted his tax returns on time. Therefore, the Ministry forgave the penalty and interest.(C86-58)

Man must pay sales tax

In June of 1985, a man purchased a 1985 Volvo in Kelowna. His two trade-ins, a 1984 Volvo and a 1983 GMC truck, were accepted by the dealer as being equal to the puchase price of the new vehicle. Hence, no money changed hands. The purchaser was informed by the dealer and by an individual at the Motor Vehicle Branch that payment of the Social Service tax was not required. However, in January 1986, the man was informed by the Ministry of Finance that he had to pay sales tax on the full purchase price of the 1985 Volvo.

Section 2 (9) of the *Social Service Tax Act* allows the purchaser to pay tax on the difference between the full purchase price and the value given to the trade-in by the seller, provided the purchaser has previously paid sales tax on the property being traded-in.

When the complainant had purchased the 1984 Volvo and the GMC truck, he had provided sufficient evidence to satisfy the Ministry that he was not a resident of British Columbia and that he had removed the vehicles from this province within 30 days of purchasing them. Pursuant to regulation 3.13(1) to the *Social Service Tax Act*, the sales tax on those vehicles was refunded to him.

The complainant felt that the Ministry should take into account the fact that he had received incorrect information from the motor dealer and an individual at the Motor Vehicle Branch. We could not support the complainant's position. While it was unfortunate that these people did not understand the legislation, it remains the taxpayer's responsibility to know the law and to pay the tax. (CS86-59)

Maximum garnishee

The complainant and his wife were in arrears on taxes owed to the Real Property Taxation Branch of the Ministry of Finance. The Ministry had sent many notices informing them that the taxes were overdue. On January 25, 1986, a Final Demand Notice was sent by registered mail. The notice was picked up by the complainant's wife, but the Ministry did not receive any response. As it is empowered to do by Section 34 of the *Taxation (Rural Area) Act*, the Ministry

then sent a third-party demand notice to the complainant's employer who paid the entire amount of the complainant's next paycheque over to the Ministry of Finance. The complainant contacted our office for assistance.

Section 4(4) of the *Court Order Enforcement Act* states that "70 per cent of wages due by an employer to an employee is exempt from seizure or attachment under a garnishing order issued by a judge or a registrar." The Real Property Taxation Branch had adopted a similar standard, i.e. that no more than 30 per cent of a taxpayer's gross wages were to be garnisheed. However, the demand letter sent to the employer simply outlined the total amount owing and required that monies payable to the taxpayer up to that amount be paid instead to the Surveyor of Taxes. The letter contained no guidelines as to the maximum amount which may be garnisheed.

When the Ministry was informed of this situation, steps were immediately taken to refund the complainant 70 per cent of his wages. Our office made a suggestion to the Surveyor of Taxes that, to preclude a recurrence, the Ministry outline its policy in third-party demand letters. In response, the Ministry amended its notice to clarify its guidelines to employers. (CS86-60)

Ministry of Forests

Considering the importance of the forest resource to all British Columbians, there were relatively few complaints received about the Ministry of Forests. In contrast to previous years, the majority of complaints concerned the shorter timber tenures rather than the major tree farm licencees.

Inquiries	1
Declined, withdrawn, discontinued	10
Resolved: corrected during investigation	8
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	1
Not substantiated	16
Total number of cases closed	36
Number of cases open December 31, 1986	18

Contract deviation costs

In 1982, a man entered into a one-year Timber Sale Agreement with the Ministry. During that year, there were several problems: he deviated from the logging plan and failed to take care of waste and debris as outlined in the agreement. The Ministry granted several extensions beyond the one year to allow him to complete logging and fulfill his obligations under the agreement. The third extension expired on December 31, 1984, and the Ministry was not prepared to grant further extensions. The complainant had still not completed his obligations under the contract.

Sections 117 and 118 of the *Forest Act* impose obligations on the person harvesting timber to dispose of slash. This obligation was also set out in the schedule attached to the complainant's Timber Sale Agreement. Where this work is not done, the *Forest Act* authorizes a regional manager either to do the work and bill the actual costs to the person who was required to do it, or simply to bill that person an amount set out in the regulations — $150 per hectare for failure to dispose of slash.

In February 1985, the man was informed by registered mail of his obligations under the contract and given until December 31, 1985 to comply. He was also told that non-compliance would result in an assessment for the costs incurred by the Crown in having the conditions completed. In April 1986, the man received a bill for $13,125 for his failure to dispose of logging slash. This figure was the result of multiplying the 87.5 hectares of the Timber Sale by the $150 per hectare charge authorized by the regulations. He then complained to the Ombudsman.

It seemed to the Ombudsman officer investigating this complaint that the complainant had not been given adequate information about the type and amount of the bill he would receive. The Ministry's February 1985 letter stated an assessment would be for costs incurred by the Crown in having the conditions completed. Instead, the complainant was billed the amount permitted by the regulations.

The Ministry agreed to estimate the costs it had incurred in disposing of slash on the Timber Sale. The estimate amounted to $2,645.73, and its substitution for the original billing of $13,125 was authorized by the Assistant Deputy Minister in charge of operations. (CS86-61)

Buffer of trees sought

A man contacted the Ombudsman, upset about the Ministry of Forest's approval of a forest company's cutting plans. The man said he and other residents of the area wanted a buffer zone of trees left along the side of a road to lessen the visual impact of the logging.

An Ombudsman officer discussed this complaint with the Ministry's district manager in the area. The residents met with the district manager to discuss their concerns. After a field trip to the cutting area, it was agreed that the buffer strip of 10 metres along the north side of the road would be laid out and that trees under 15 metres in height within this strip would not be cut. (CS86-62)

Trees stolen

In May 1980, a woman purchased 32 hectares of land near Quesnel from a company. She lived in southern British Columbia, and only saw the property one time before she bought it. Two years later, she wanted to sell the property. A real estate company surveyed the land and informed her that it had been logged since the time she bought it.

In 1979, while the company was still the registered owner of the property, it applied to the Ministry for a timber mark. This woman complained to the Ombudsman that the Ministry was at fault for issuing a timber mark to the company.

A timber mark does not give legal authority to anyone to remove timber from either Crown or private land. It is simply a way of showing who owns the logs that arrive at a mill. It is not the Ministry's responsibil-

ity to monitor changes in ownership of land. Even if the Ministry had been aware that the company had sold the land to the complainant, it would not have known whether the complainant had entered into an agreement which authorized the company to remove timber from the complainant's land.

While it appeared that the company had no legal authority to remove timber from the land after May 1980, we could not find any fault on the part of the Ministry of Forests for issuing the timber mark. One recourse available to this woman was to sue the company for the value of the timber. (CS86-63)

Ministry of Health

The volume of complaints against the Ministry this year was almost the same as in 1985. Slow, but steady business. Slow, even though there were over 500 complaints, because this is a huge Ministry, serving most of the population of British Columbia by one or another of its programs. Steady, in the sense that the Ministry has continued to be cooperative, especially in terms of finding solutions to individual "people problems", such as ways to reinstate medical coverage or obtain a birth certificate in a hurry.

One problematic area in 1986 was the Ministry's methadone maintenance program which raised serious questions of social policy. The federal government previously issued licences to duly approved physicians to prescribe methadone. That licensing ceased, and the Province took up the slack by providing clinics in which users could register. Moving from an individualized, doctor-patient relationship, into a program with structure, protocol and rules is not an easy transition; many registered addicts took issue with the change. Some raised questions we would never have expected, such as the need for private appointments for users who must bring small children to the appointment and did not want their children exposed to other users. Clinic staff were cooperative with us, and open to review of any decision, although many addicts remained dissatisfied with the results. The program is once again in transition, as the federal government has decided to reinstate the option of licensing individual doctors.

Problems which arise from septic field disposal systems arise in various locations throughout the province. Investigations are assisted by a cooperative attitude from Public Health Inspectors in the various administrative regions, and from personnel within the Ministry's main office complex. One significant development was the establishment in 1986 of a three-Ministry (Municipal Affairs, Environment and Parks and Health) committee to review the broad area of septic field difficulties.

Inquiries	31
Declined, withdrawn, discontinued	166
Resolved: corrected during investigation	130
Substantiated: rectified after recommendation	2
Substantiated: but not rectified	0
Not substantiated	122
Total number of cases closed	451
Number of cases open December 31, 1986	80

Criminal record check not a problem

A woman complained that the Ministry of Health's new policy on criminal record checks had unfairly precluded her from employment with the Ministry. She had been told by someone in the Ministry that because she was once suspected of extortion, the Ministry would not consider her for employment.

Our investigation found that the problem seemed to be one of misinformation. The Ministry's personnel policy requires a criminal record check only for successful applicants about to be offered a designated position of trust. If the record check reveals a charge or conviction, the personnel officer involved contacts the applicant to discuss the issue. Consideration is given to the relevance of the charge or conviction to the position being considered, as well as the length of time since the last charge or offence. The personnel officer then prepares a written report for the executive director of personnel services. The executive director will then provide a written recommendation to the deputy minister, after consideration of the personnel officer's report. However, it is the deputy minister who determines whether or not an offer of employment will be made, based on the assessment of the relevancy of a successful candidate's criminal record.

Since the woman had never been charged or convicted of any offence, she did not have a criminal record. Thus, the Ministry's policy in no way precluded her from employment. (CS86-64)

Part time pay unfair?

A man complained that the Ministry of Health's Emergency Health Service Commission's practice in paying part-time ambulance attendants was unfair.

Although guaranteed four hours pay for each call, if they worked longer than four hours they were paid to the nearest quarter hour. Thus, if an attendant worked for four hours and five minutes, he or she was only paid for four hours. If an attendant worked four hours and ten minutes, he or she was paid for four hours and fifteen minutes. Full-time attendants were paid to the minute, pursuant to their labour agreement with the Commission.

After considering the problem, the Commission decided that its method of paying part-time ambulance attendants was improper. The commission decided that after the initial four hours, part-time ambulance attendants would be paid up to the next quarter hour. An attendant working four hours and five minutes would have his or her pay rounded up to four hours and fifteen minutes. Thus, the problem was considered resolved. (CS86-65)

Medical plan reversed decision

A woman came to the Ombudsman's office to complain that both the Medical Services Plan and the Hospital Programs Division of the Ministry of Health refused to pay for the medical expenses incurred by her late husband while they were on vacation in Barbados.

The complainant, a pensioner living on a fixed income, was not able to pay for the medical treatment involved.

We contacted the Ministry of Health which reviewed the claim and agreed to cover the medical costs in question if the complainant provided detailed receipts for the hospital charges and the physicians' fees.

Our complainant was able to provide the Hospital Programs Division with the required receipts for all hospital charges, which comprised most of the expenses, and she was reimbursed.

Unfortunately, the woman was unable to provide receipts for physicians' fees and consequently the Medical Services Plan could not reimburse her for those expenses.(CS86-66)

Hospital bill a surprise

Some weeks after being released from hospital, a woman received a bill in the mail for daily user fees for her hospital stay. As a pensioner on a limited income, the bill for $144.50 came as a shock and she came to the Ombudsman's office to complain that she had not been informed on admission that there was a daily user fee.

We advised the complainant that, under the *Hospital Insurance Act and Regulations*, the hospital is required to charge the fee of $8.50 per day.

Our investigator approached the hospital regarding the question of advising patients on admission that a user fee will be charged. The hospital agreed that in future all patients would be verbally advised by the admitting clerk that a daily user fee would be charged. The hospital also agreed to forgive the charge against the complainant because of the hardship it would create for her. (CS86-67)

Where he lived was the key

A man complained that the Medical Services Plan considered him and his family ineligible for medical services coverage because the plan did not consider them residents of the province. He explained that he worked in Vancouver five days a week and during that time, he resided in an apartment in his parents' Vancouver home. He maintained he commuted home to Washington state on weekends.

We thought the Medical Services Plan should review this man's case because it appeared to us that he had two residences, one in Washington State and one in British Columbia. Moreover, he spent more than 50 per cent of his time in the province while he worked. For these reasons, we thought he should be eligible for medical services coverage. However, his family spent the majority of their time in Washington and therefore were ineligible for medical services coverage.

The plan agreed to review the man's case and assigned an inspector to ascertain the facts about the man's residence in British Columbia. What the inspector found out and what the complainant told us were two very different sets of circumstances. In the end, the man agreed he spent the majority of his time in Washington and therefore was not eligible for medical services coverage. (CS86-68)

Needed consent waived

A woman complained that she was unable to have her daughter's name changed without her former husband's consent because the daughter was still a minor (under the age of 19). The woman needed her daughter's name changed for passport purposes. The woman did not know her former husband's whereabouts and he had never been involved with the family in any way over the past 18 years. Nevertheless, she had been told that she would have to go to court in order to waive the requirement for her former husband's consent.

The Director of Vital Statistics offered to use his discretion under the *Name Act* and to waive the consent requirement if the woman put in writing that she had attempted to locate her former husband and that he had been absent from the family for the past 18 years.(CS86-69)

Misinformation on medical coverage

A woman complained that the Medical Services Plan would not cover some costs for doctors' services to her family because of a gap in her medical services coverage following a move from Alberta to British Columbia.

Alberta officials had told her the Alberta plan would continue with the family's medical insurance coverage for up to 12 months after moving from the province if the family continued to pay its premiums. The complainant did this.

Many months later, however, the Alberta plan informed her that a mistake had been made. The family

could be covered for three months while in another province, not 12, and coverage was cancelled retroactively to the end of that three-month period. She immediately applied for medical services coverage in British Columbia as a new applicant, but there is a three-month waiting period for it to take effect. This meant that there would be gap between the complainant's old and new medical coverage. The doctors' bills the family had incurred during that time were still owing.

When we explained to the Medical Services Plan that the province of Alberta had made the error and had agreed to cover the family for medical services up to 12 months after their move from the province, the B.C. plan offered to bridge the gap in the family's medical services coverage, thereby enabling the woman to claim for doctors' expenses which remained owing. (CS86-70)

Landed immigrant policy change

A man complained that the Medical Services Plan would not give medical coverage to his wife because she had not yet received her landed immigrant status. At the time, the plan's policy was to deny medical services coverage to a person until he or she received landed immigrant status.

Recently, the Medical Services Plan changed its policy. It now gives medical services coverage to spouses of bona fide plan subscribers, providing there is proof a spouse has made application for landed immigrant status. In this case, the complainant's wife had made such an application and the complainant was a bona fide subscriber. When we informed the complainant of the plan's change in policy, he re-applied to have his wife covered. (CS86-71)

Urine test questioned

A woman complained that her urine samples at a methadone treatment clinic had shown that she had taken opiates. However, she claimed that she took no drug other than the methadone the clinic issued her.

In reviewing the woman's complaint, we discovered that the clinic's method for testing urine samples was set up in such a way as to identify contaminants in a person's urine. We found that the complainant simply did not believe that a urine sample could be tested in such a way as to give specific information about various types of drugs a person takes. We were satisfied that it can, and does, show use of illicit drugs, such as opiates. The program director agreed to meet with her to explain the process which the clinic uses. (CS86-72)

Waiting room company

A woman complained that the new methadone treatment clinics would not give her the degree of privacy she had had with her own physician. She explained that she has two small children and takes them with her when she gets her methadone. This had not presented a problem while she had gone to a private physician for her treatment. However, since the federal government decided to stop licensing private physicians to prescribe methadone, clients go to clinics for their treatment services. This woman was worried that her children would have to wait with other addicts while she got her methadone.

The clinics have tried to meet people's special needs whenever they can. In this case, the clinic offered to make appointments for the woman at times when other clients would not be present. (CS86-73)

A case of qualifications

A woman complained that the Child Care Facilities Licensing Board would not issue her a pre-school supervisor's licence because she had not done her 500-hour work experience requirement with a licensed pre-school supervisor.

Although her supervisor had received a letter from the board which appeared to recognize her as a person qualified to supervise students, in fact the board considered her unqualified to do this. Since it is the student's responsibility to set up a practicum and to check that the supervisor is qualified, the complainant thought the board would not give her credit for her 500-hours of work and thus she would not be licensed until she had redone her practicum with a qualified supervisor. The complainant was very upset because she had accepted a job as a licensed day care worker. Without her licence, she would not have this job.

We approached the board and obtained its agreement to review this woman's complaint. In the end, it was agreed to recognize other work the woman had done under a fully qualified supervisor. The woman got her licence as well as her job. (CS86-74)

A gap in coverage

A man came to us when he had a $6,000 hospital bill which he could not afford to pay. He had been in hospital for three weeks.

While in hospital, he received income assistance and was classified as 'unemployable.' Whenever the Ministry of Human Resources classifies someone as unemployable, the Ministry may pay for that person's medical services coverage. In this man's case,

his individual coverage ended August 1985, and the Ministry's coverage took over in November 1985. The two month gap included his three week stay in hospital. The Medical Services Plan agreed to bridge the gap, if the complainant would send in two months premiums. By doing this, the complainant would have continuous coverage and the bills he had incurred while in hospital would be paid by the Medical Services Plan and Hospital Programs. (CS86-75)

Patients charged different rates

We received a request for information from a woman who had moved from Alberta. As she had been in B.C. less than three months, she was still on Alberta's medical plan. She could get service here and some doctors would simply bill Alberta. Other doctors required her to pay and seek reimbursement herself from Alberta.

She had expected there might be differences between approved rates for the provinces. What she had not expected was that there were three rates — the Alberta plan's approved rate, the B.C. plan rate, and a fee schedule for 'private patients', set by the B.C. Medical Association. This woman was asked to pay more than either plan covered and thought this was extra-billing, a practice outlawed in B.C.

We explained to the woman that B.C. does not allow doctors to extra-bill insured patients, meaning those within B.C. Medical Services Plan. Anyone else is considered 'private' and the province does not control those billings. Even though she was insured by the Alberta plan, B.C. doctors can, if they wish, regard her as a 'private patient.' And that fee may be significantly higher than the plan will cover. Alternatively, as this woman had found, some doctors are willing to bill the Alberta plan. It seems wise to ask first. (CS86-76)

Institutions

We continued our program of regular visits to institutions operated by the Ministry of Health during 1986. (Riverview Hospital, the Forensic Psychiatric Institute and the Maples, a facility for the treatment of adolescents).

The number of complaints dealt with, 277, differed little from the number received in 1985. Officials and staff continued to cooperate with our staff. We have been pleased to note that residents and patients are aware of internal avenues for addressing complaints, and that these internal mechanisms are well used.

It often seems that some of the issues we deal with in such facilities are less than earth-shaking in importance. But the lesson to keep in mind here is that what is important to someone who has the freedom to come and go at will and what is important to someone whose existence is defined by the institution in which he or she resides can be worlds apart. And so there is value in our relaying to the institution's administration the concerns expressed by patients for cabinets in which to store their belongings, for new books and board games for the day-room, for additional checks to make sure that smoking rules are not being abused. We believe that the patients see us as another voice that will speak on their behalf, and this fact in itself eases some small part of the strain of institutional living. On the other hand, we perceive that when it is necessary to inform a patient that his or her concern could not be substantiated, that the authority was right after all, there may be a more willing acceptance of this information from the Ombudsman's staff simply because of our independent status.

Many of the comments made on institutions in the introduction to Corrections under the Ministry of Attorney General apply equally to health institutions. Programs, food services, appeal mechanisms, etc, are common complaints no matter what ministry is ultimately responsible.

Decals removed

We did not believe that the young people receiving treatment at the Maples Adolescent Treatment Centre needed a label when they were taken to community or other activities. Yet this is what occurred whenever a government vehicle was used to transport residents, because each vehicle was marked with a Ministry of Health insignia.

The administration of the Maples agreed that it would be preferable for vehicles to be unmarked, and the necessary exemption from the general Treasury Board policy on government-owned vehicles was sought and obtained. Residents may now attend medical appointments or recreational activities as anonymously as any other teenager. (CS86-77)

Compensation to patient for injury

In 1984, the Ombudsman reported a case in which a staff member used unnecessary force against a resident of the Forensic Psychiatric Institute. This incident was investigated by the authority and a staff member was dismissed for patient abuse. The resident received a summary of the investigation and an apology from the hospital.

Afterwards, the resident felt that he should have been compensated for the mental trauma involved.

We agreed and wrote to the director when the arbitration hearings of the staff member were concluded. The hospital initially rejected this request but reconsidered upon the request of the Ombudsman. The appropriate considerations were then made by the Attorney General's department which agreed to pay $200 to the resident as the injury to the patient was minimal.

We now consider this matter fully rectified. (CS86-78)

Housekeeping complaints

Two major groups of patients become residents at the Forensic Psychiatric Institute in Port Coquitlam. One group includes persons who have completed their court appearances and have been found unfit to stand trial or not guilty by reason of insanity. These patients will receive treatment until they are well enough either to return to court or until a review panel's recommendation for a conditional release to the community is accepted by the Lieutenant Governor.

The other major group of patients is resident at the institute because the court has requested an assessment of their fitness to stand trail. Usually, this assessment must be completed within a 30-day period. The person on a 30-day remand from the court is not there for treatment and may refuse all medications or programs. We receive complaints from both groups of residents. Their needs, obviously, are very different.

One person on remand brought numerous complaints to us. While individual complaints may seem insignificant, we appreciate the frustration that can develop from a whole series of small but unresolved grievances. Often, one complaint may identify a useful change in procedures or facilities which may improve the situation for other patients.

This particular patient advised us that other residents were smoking in bed. We alerted staff as this creates a danger to all residents if fire should break out. When this patient noted personal possessions were being stored in boxes, staff agreed to obtain additional cabinets for personal storage. He also pointed out a shortage of games and activities on the ward. Consequently, the staff ordered more table games.

The investigating Ombudsman officer could not support all the resident's complaints. The patient wanted to sleep in longer in the morning, but staff must get patients up early for interviews and observation reports so that the assessments can be completed. We also found the institute's practice of restricting telephone calls to be reasonable in the circumstances. While these complaints are essentially housekeeping complaints, our office provides a means for residents to express small or large complaints and to receive an answer after an objective review. We believe both patients and staff needs are served as we do this on a regular basis. (CS86-79)

Raise in allowance sought

Several residents of The Maples Adolescent Treatment Unit complained that the $4.75 weekly allowance was insufficient. Bearing in mind that all food, shelter and basic needs are supplied by the institution, and noting that residents had an opportunity to earn additional money by maintaining good behaviour and performing chores, we found that the allowance was sufficient. (CS86-80)

Patient's dignity

A Riverview Hospital patient complained that he had been expected to attend a Review Panel hearing while wearing pyjamas. He refused to do so and, instead, the members of the panel met with the patient on the ward.

The Review Panel hearing was important to the complainant because the Panel had the power to order the release of an involuntary patient. The patient believed his application for review would be prejudiced if he appeared in pyjamas. We agreed it was unreasonable to expect the patient to leave his ward while wearing pyjamas, whether for a formal hearing or for any other purpose. After all, the reason he had been restricted to pyjamas for a short period was because he was considered to be a possible runaway, and hospital staff presume that patients are less likely to abscond without the sense of personal dignity most of us believe is conferred upon us by our clothes.

Following our discussions of this case with officials of the hospital, the director issued specific instructions that no patient should attend any public function wearing pyjamas. (CS86-81)

Controlling allowance reasonable

To encourage a patient of Riverview Hospital to develop better personal hygiene habits and more appropriate social skills, the treatment team decided to control his monthly comfort allowance as a reinforcer. He was rewarded daily with spending money for performing routine tasks and behaviours, such as making his bed and displaying appropriate table manners.

We received a complaint from this patient verbally during a visit to the institution. Our investigation revealed that the patient always received the total allowance by month's end. All that was controlled was the timing. Bearing in mind that no essential needs were affected by the scheme, and recognizing the need to encourage behavioural changes in the patient if he were to make progress, we concluded that suspending the complainant's discretionary control over his spending money was justified. (CS86-82)

Ministry of Human Resources

It is not surprising that, with close to 125,000 households in B.C. on income assistance, we receive a great many calls about this Ministry. Approximately 70 per cent of our work with this Ministry is related to the income assistance program.

The Guaranteed Available Income for Need (GAIN) program was designed in the 1970s but since then, the situation has changed dramatically. Traditionally, society has thought of recipients as falling into certain major categories — single mothers, disabled people or individuals who do not want to work. With the current high rates of unemployment, there is now a wider cross section of individuals applying for assistance. Often these are people who never thought they would have to rely on the government and, after selling the family home and going through life savings, are now collecting assistance as their sole means of support. For anyone having to provide for his or her family with an amount based on assistance rates which had not changed since 1981, this can be a very difficult time. Ministry workers are working with more and more individuals who are unfamiliar and uncomfortable with a system which appears to the clients not to meet their needs.

In addition, these people are usually in desparate situations when they contact the Ministry or our office. Some of our calls are from people with only $5 left, no food except staples, who are in panic, wondering how to feed themselves and their children. Other calls are because electricity is disconnected, an eviction notice has been served or there is no money to pay for a prescription. Usually, these people have already phoned the Ministry and been refused.

While the Ministry has procedures for clients who want to dispute decisions made, clients will often contact our office when they feel there is a breakdown. We attempt to assist in resolving issues. Frequently, a call to a local Ministry office can resolve the difficulty by sorting out misinformation or giving the extra information which changes the decision. We may negotiate other arrangements or simply communicate information back to the complainant such that the person now understands the Ministry's decision.

For issues that cannot be resolved in this way, a complainant can be referred to the appeal process to have his or her concerns reviewed by various officials. Being involved with a system that appears to be controlling and powerful may never be easy. However, our experience has shown that Ministry personnel are anxious to meet the needs of their clients and deal with our office cooperatively to this end.

Inquiries	244
Declined, withdrawn, discontinued	386
Resolved: corrected during investigation	660
Substantiated: rectified after recommendation	2
Substantiated: but not rectified	0
Not substantiated	311
Total number of cases closed	1603
Number of cases open December 31, 1986	177

Excess assets

A man complained that the Ministry refused to grant him income assistance because he had an inheritance of $12,000 coming to him. Unfortunately, the executor of the will was not willing to release the money unless the man was attending a training program. The man was ineligible for income assistance due to excess assets, but unable to access the money.

The Ministry agreed to issue hardship assistance while the problem was sorted out. Acting as a mediator, our office asked the Ministry of Labour to put together a program of rehabilitation and training for the man. This package was then presented to the executor of the estate, who agreed to begin releasing a monthly allowance. Thus, the man no longer required assistance from the Ministry and the problem was resolved.(CS86-83)

Choice of church upheld

A 17-year-old who was under the care of the superintendent of Family and Child Services complained that his foster parents were not allowing him to attend the church of his choice.

The foster parents were members of a church and were insisting that the complainant attend their church. The complainant preferred to attend his own church but was not being allowed to.

Our investigator spoke with the Ministry who advised the foster parents that the complainant was free to attend the church of his choice and that they were not to interfere with that choice. This resolved the problem. (CS86-84)

Refused to give appeal kit

The Ministry had placed a brother and sister on income assistance, even though they were under 19

years old. Normally, only adults are eligible for income assistance. The Ministry subsequently decided to stop income assistance because the children were not meeting agreed-upon conditions. When they tried to appeal the decision, the Ministry would not give the children an appeal kit and an advocate for the children then complained to the Ombudsman's office.

Usually, when someone is receiving income assistance and the Ministry decides to discontinue the assistance, the person has a right to appeal the matter. District offices should give out appeal kits when requested and assist people with their appeal. Once appealing the matter, the Ministry usually reinstates the person's income assistance while the matter is under review.

In this particular case, the Ministry did not consider the matter appealable because the children were under 19. We asserted that, having been granted income assistance, the children also had the same right to appeal as any other eligible person. They also had the right to have their benefits reinstated until an appeal was completed.

The Ministry concurred, gave the children an appeal kit and reinstated their benefits pending the appeal. (CS86-85)

Help for signing course

Income assistance provides money for shelter and support for many people in need. The rates are fixed and often there is little left after the basic needs of food, shelter and clothing are met. When a family which is dependent on income assistance has an additional expense, the situation can become severe.

Such was the case when we received a call from a mother whose young child suffered from a hearing impairment. The child was learning sign language at a clinic and clinic staff informed the mother that she too must learn to sign. Courses offered in the community which teach signing are expensive and the mother could not afford to pay. Also, the only available course for several months was starting four days later and the mother had been refused payment by the Ministry.

Our office contacted the course instructor, who was willing to let the mother start the course prior to paying. The Ministry was given a written referral from the child's physician so that payment for the course could be considered. The instructor assured us she would include the complainant whether or not payment from the Ministry was forthcoming. (CS86-86)

Alternate funding found

A single mother of three children wanted to finish the courses necessary for her air brake and transportation of dangerous goods licence. The woman was receiving income assistance for herself and her children and she felt she could find full-time work once she completed the courses. Her family had been able to pay for most of the training, but the final courses cost a further $850.

The woman had approached the Ministry rehabilitation officer and had been refused such a large amount of money. The funds available for retraining are limited, and for one person to receive $850, others would have to be turned down, she was told.

When the woman called our office, we explored other ways of financing with her, such as Credit Union Pacific (CUPAC) Services Society, a non-profit society offering financial services to those in need. As the driving school was willing to state they would hire her once she finished the course, she was able to receive a low interest loan from CUPAC for part of the amount and the balance from the Ministry. (CS86-87)

Assistance reconsidered

A man complained to us that the Ministry would not give him income assistance. The man was completing 200 hours of community services as ordered by the court, making him unavailable for work. This made the complainant ineligible for assistance.

We discussed this with the probation officer and the financial assistance worker dealing with this man's case. The probation officer stated that the community hours could be done two days a week making the complainant available for work the remaining days. The financial assistance worker agreed to reconsider the man's eligibility and to issue assistance based on this information. (CS86-88)

Therapy sought for son

We received a call from a father who was concerned about his three-year-old son. He said that the child needed treatment for emotional problems. Therapy had been promised by the Ministry, but many weeks had gone by and the therapy had not yet begun.

We contacted the Ministry to determine why therapy had not been initiated. We learned that the therapist who was to provide the therapy was no longer available and that there was a problem with funding for a private therapist to take over. We sug-

gested that the social worker pursue the matter further with the Ministry of Health and seek funding for therapy from the local mental health unit. The local mental health unit accepted the referral and the child was placed in therapy. (CS86-89)

Many ministries involved

A woman complained that her 13-year-old son was not receiving the services he required from the Ministry. The child was in the Ministry's care on a special care and custody agreement because of serious behavioural and emotional problems and drug and alcohol abuse.

We contacted the local mental health office, and the various professionals involved to discuss the coordination and planning for special services and treatment for the child and the importance of the parents' participation in this planning process.

In British Columbia, as many as four ministries may be simultaneously providing services for a disturbed or delinquent child:

- ☐ The Ministry of Health may provide treatment,
- ☐ The Ministry of Human Resources provides support services to the child and parents in their home, or if the child is a temporary or permanent ward of the Ministry, it provides care in a foster home or other Ministry facility,
- ☐ The Ministry of Education provides special educational services to children having problems in school, and
- ☐ The Attorney General's Ministry provides correctional services for young offenders.

Although not all of the difficulties were resolved in this case, the ministries were able to coordinate their efforts in providing the boy with the services he required. The coordination between ministries of services to children who are having serious problems is difficult at best but is essential to meeting the special needs of these children.(CS86-90)

Parents ordered to help daughter

A 17-year-old woman left home due to difficulties within the family and moved in with acquaintances in another community. She applied to the Ministry for financial assistance as her part time work did not provide adequate income to cover her living expenses. The Ministry contacted the parents and the woman's father agreed to give some financial assistance. The Ministry provided temporary help but would no longer support her when the parents refused to provide further financial support, even though they were financially able to do so.

When this woman complained to the Ombudsman's office, we referred the matter to a family court counsellor and legal aid. When the family court counsellor's efforts to mediate the dispute failed, the legal aid lawyer represented the young woman in taking legal action under the *Family Relations Act* for maintenance from the parents. At court, the judge ordered the parents to provide financial assistance for their daughter. The key to resolving this complaint was cooperation between the social worker, the family court counsellor and legal aid in ensuring that the needs of the young woman did not get lost in the complexity of the system. (CS86-92)

Income assistance vs. UIC

We received a number of calls from people on UIC, receiving income assistance to top up their income. These people were confused because they thought the Ministry was deducting more money than UIC actually paid.

The confusion arises because of the difference in the two payment systems. Income assistance pays monthly, deducting from your cheque for February, the money you received in December and declared in January. UIC pays every second Friday. A normal month has two UI cheques although twice a year, you would get three. Because of the lag in deducting UI payments from Income Assistance, it is possible to have more deducted in a given month than UI actually paid in that month.

Some Ministry offices had tried to deal with this confusion by averaging UIC and deducting the equivalent of 4.3 weeks pay. This benefited clients in some ways, because their income was more predictable, but it confused people and left them short of money to which they were legally entitled if they received benefits in months where there were only two UI payments. The other problem, from our point of view, was that the practice differed from office to office.

We suggested all calculations be based on actual receipts. This suggestion was implemented in all offices in the region and the situation has been resolved as a result. (CS86-93)

Help with expensive diet

A man with multiple health problems contacted our office. As a result of intestinal surgery, he had an inordinately expensive diet. The Ministry had been paying him an extra $65 per month but planned to stop, expecting him to move to cheaper accommodation or get a roommate in order to be able to afford the diet. The man told us that the side effects of his

problem meant no one was willing to live with him, and that he shouldn't be expected to move because he had heart problems which needed surgery in Ontario in the next few months.

When we talked to the Ministry, we learned that staff had tried to accommodate this man. The reality was that he could not expect to receive this extra food allowance forever. The office agreed to continue the payment, with monthly reassessment, until the heart surgery situation was cleared up. We put the man in touch with B.C. Housing Management Commission to see if it could provide cheaper accommodation.(CS86-94)

Date of arrival questioned

We received a call from a person who stated that he and his wife had moved to British Columbia from Quebec. They left Quebec on June 15 and arrived in B.C. on July 1.

On September 25, they had a baby. The man was under the impression that the Quebec Health Insurance Plan was responsible for the bill. However, the plan would not pay as the complainant's date of arrival in B.C. was in question. The B.C. plan said that it was Quebec's responsibility to pay as a person moving from Quebec to B.C. is covered for three months from the date of arrival in the new province.

We contacted the Ombudsman's office in Quebec which investigated the matter on behalf of the complainant. Apparently, the information on which the Quebec plan made its determination was incomplete. It subsequently agreed to pay the medical costs of approximately $500. (CS86-95)

Candlelight for month

A young woman on income assistance had her Hydro disconnected because of a $733 outstanding bill. This bill represented six months' use in a town where she had lived previously, and the woman had not expected the amount to be nearly so high. For a month, she used candlelight while independently looking for a solution to her problem. She filed an income tax return which promised her about $350 in a Child Tax Credit rebate. She discussed the situation with B.C. Hydro, offering this rebate money when it came, plus $50 per month from her income assistance until the debt was paid. Hydro officials agreed with the terms, but wished to have the Ministry of Human Resources pay Hydro directly and have the customer repay the Ministry.

This type of transaction is not within the policy guidelines of the Income Assistance Program. The client called us to see if we could encourage such a deal. When we called the Ministry, however, we found that the supervisor had arranged a far better solution to her problem. He had issued a $350 crisis grant payment to Hydro, and the power was reconnected. Payment of the balance owing would be the client's responsibility on whatever terms she arranged with Hydro. With considerable relief, she promised Hydro her Child Tax Credit money in order to wipe out the obligation quickly.(CS86-96)

Anger over adoption refusal

A couple contacted our office after a request to adopt a second child was refused. They were angry, felt powerless, and were very upset that their son may end up an only child.

This kind of complaint is very difficult. Emotions run high and Ombudsman officers are not employed as social workers. What we can do is look at the process of information gathering and checking which leads up to such refusals.

In this case, it seemed there were problems in the process. The couple had not had a chance to challenge negative information received by the Ministry before the decision was made. We did not know if the negative information was true, but we thought the Ministry had not handled the problem as well as it could have.

In the end, everything worked out. The Ministry offered to restudy the couple, and the couple agreed to take some parenting courses. A new decision was to be made, giving the complainants another chance. (CS86-97)

Salesman finally helped

A man contacted this office when the Ministry of Human Resources refused to provide him with income assistance. Under Ministry policy, the man was ineligible for regular income assistance because he worked as a commission salesman. The man was employed fulltime as a real estate agent, working on a total commission basis and had received no income for two months. To further complicate things, he had no credit to fall back on, due to a bankruptcy a few years previous. His only asset was a small 10-year-old car which he required for work.

This man was caught in a 'no-win' situation. He had no unemployment benefits to fall back on if he quit, and would only become eligible for regular income assistance if he agreed to give up his real estate licence.

The Ministry eventually agreed that although this man did not qualify for regular income assistance, he

could be granted hardship assistance. Thus, the Ministry issued a food voucher for $75 and agreed to cover his rent should he receive an eviction notice.(CS86-98)

Misinformation about appeal

A society complained when the Ministry refused to allow all former Community Involvement Program (CIP) recipients to appeal termination of their benefits, despite a recent court decision that these clients had the right to appeal.

When the original decision to cut the program was made, many clients were told either that they had no right of appeal, that they should await the outcome of the court case or that they could not appeal because there were no appeal forms left. Many clients who had originally attempted to file an appeal were now being told by their district offices that they could not appeal even in light of the favorable court decision.

The Ombudsman's office met with Ministry officials and correspondence was exchanged at length. The Ministry finally decided to accept belated appeals from clients who provided sworn affadavits to the effect that they had tried to appeal within the 30-day time limit allowed by statute. Although some former CIP recipients might still not be allowed to appeal because they were never informed of that avenue and had not tried within the time-limit, the Ministry was not willing to broaden the scope of the arrangement. In view of the Ministry's present offer of resolution, and the fact it had operated under the belief that clients did not have the legal right to appeal, the compromise was accepted and investigation ceased.(CS86-99)

Telephone manners

A man complained that when he phoned a Ministry district office to speak with a financial assistance worker, he was told that she was not accepting calls. He then asked to speak with the district supervisor and was told that she was not accepting calls either. The man felt that the Ministry's staff were avoiding him and that he was powerless to prevent them from doing so.

The problem was resolved when the district supervisor found that her receptionist had been routinely telling callers that staff members were 'not accepting calls' when they were, in fact, at a meeting. The district supervisor instructed the receptionist and clerical staff to explain why the workers were unable to answer the phone, rather than to use the cryptic phrase 'not accepting calls.' The district supervisor also called the man to explain what had happened and what steps had been taken to make sure that it would not happen again. (CS86-100)

No exception on GAIN benefits

A woman complained that the Ministry would not continue her full GAIN for Handicapped (GFH) benefits while she vacationed with her parents in California during the months of March and April. The Ministry agreed to allow her full benefits for March and only shelter benefits for April, to ensure she could maintain her home while she was away. However, the woman felt she should receive her full entitlement.

The woman's position was based on the false premise that her GFH benefits constituted a pension. In fact, GFH benefits are a higher rate of income assistance paid to those designated as handicapped. The *GAIN Act Regulations* state that if an income assistance recipient is out of the province for longer than 30 days, the person is ineligible for further assistance. Exceptions can be made, for instance, for travel for education or medical reasons, or if failure to continue benefits would cause undue hardship.

Since the Ministry had ensured that this woman would not lose her home by covering her shelter expense, she did not fall into any of the three possible categories for an exception. (CS86-101)

In a second case, we were able to get the Ministry's agreement that an exception should be made on the grounds of hardship.

The parents of a 42-year-old victim of Downes Syndrome complained that the Ministry planned to discontinue their son's GAIN For Handicapped (GFH) benefits. The family was planning a trip south where the climate would better suit the father's arthritic condition. Although their son's GFH benefits would not cover all the expense involved in taking him with them, the parents were willing to make up the difference. However, the cost of taking their son without the added income of his GFH benefits would cause the family undue hardship. The alternative, placing their son in a care home here in the province, was unacceptable to the parents.

After contact by our office, the Ministry agreed to extend two months of GFH benefits to the son while he was travelling with his parents.(CS86-102)

Verbal report allowed

A woman complained that the Ministry of Human Resources was acting unfairly by requiring her son to carry out a job search prior to being issued income assistance benefits.

Our investigation found that the Ministry had acted properly. The son had been declared ineligible in December for failing to look for work. In order to re-establish his eligibility, the Ministry was asking that he register with Canada Employment, report to a Rehabilitation officer twice weekly, and that he do a weekly job search. Since this young man was unable to read or write, the Ministry agreed that he could provide a verbal report of his job search to the Rehabilitation officer. The Ministry was also willing to provide the necessary schooling in order to help the young man learn to read and write.(CS86-103)

Reclassification cost $135 per month

A woman complained that the Ministry of Human Resources had reclassified her as ineligible for income assistance, putting her and her family on hardship assistance instead. This meant a loss of $35 per month because, as a single mother with two young children, she had been entitled to the higher 'unemployable' rate of income assistance. Further, since she was now on hardship assistance, she lost her $100 maintenance exemption. This meant a total loss of $135 per month.

Our inquiries with the Ministry revealed the complainant had been declared ineligible because she owned too much in assets — a house in which she did not live. However, the complainant had been forced out of the house when her bank began foreclosure. She was able to sell the house but retained nothing from the sale because she had no equity built up. Once informed of the situation, the Ministry agreed to reclassify the woman as 'eligible' and put her back on regular income assistance at the unemployable rate. A cheque for $135 was issued to cover the lost income for the month.(CS86-104)

Deducting care allowance does trick

A woman complained that the Ministry had refused to supplement her income. She was attending school while sponsored by Canada Employment, receiving $420 for living expenses and $320 as dependent care allowance for her son. However, daycare expenses seriously depleted this income. She was not eligible for a provincial daycare subsidy because the federal dependent care allowance was intended to cover that expense.

The problem was resolved when the Ministry agreed that the woman's daycare expenses should be deducted from the $740, leaving a net figure as "income" from Canada Employment. That net income was less than income assistance rates, so the Ministry issued a cheque for the difference between the two. (CS86-105)

Day care subsidy kept

A woman complained that the Ministry had discontinued her daycare subsidy because her son was attending an 'unlicensed' facility on Indian band land. She pointed out that the program was of high quality, and the only program of its type in her area.

The woman's problem was resolved when the nursery school offered to waive their fee if she would provide transportation to the program for another child in her area. (CS86-106)

Benefits continued

A man complained that the Ministry had refused to provide him with income assistance for April. He had borrowed sufficient money to enroll in a St. John's Ambulance course which would lead to a secure job beginning on April 17, 1986, provided he successfully completed the course. The Ministry agreed to continue the man's benefits for April, once satisfied that his course would, in fact, lead to a job. (CS86-107)

Travel costs covered

A young mother had to undergo major surgery. Although the procedure was available in her home town, she preferred to have it done in Vancouver, where relatives would be able to care for her baby during her hospitalization and recuperative period. Because there was no medical necessity involved, the Ministry of Human Pesources refused to pay the transportation costs.

We ascertained that the woman's father, with whom they lived, was unable to care for the baby, so that a combination of foster home and homemaker help would be required to assist the mother and baby over the period in question. Travel to Vancouver would be less expensive than the home support otherwise required. On this basis, and the physician's opinion that the child care situation in Vancouver would be better for the nursing baby, the Ministry agreed to the payment for travel. (CS86-109)

Woman wanted to stay on farm

A woman was living alone on a farm. The bank which held the property after a foreclosure for non-payment of mortgage and taxes was allowing her to remain there without paying rent since a sale was not imminent.

Because things had become so difficult for her, she applied to Human Resources for income assistance and was accepted. The following day, B.C. Hydro dis-

connected her power after many notices because her account had grown to over $1,000.

Ministry of Human Resources staff tried to persuade her to leave the farm and move into affordable housing in town, but she didn't want to give up her animals and lifestyle.

The Ombudsman's office approached B.C. Hydro. The company reconnected the power while the matter was under discussion. Hydro also offered to allow the woman to pay off some of her debt gradually if Human Resources would pay half of it up front, but the Ministry would not agree, since the property no longer belonged to their client.

Another solution was found. Since the woman paid no mortgage or other shelter costs except telephone and electricity, the Ministry agreed to allot the unused part of this woman's $200 shelter component towards paying off the Hydro debt. B.C. Hydro agreed to accept these terms. Although it would probably take at least a year to pay off the arrears, the woman could stay on the farm and Hydro would have an opportunity to recoup what otherwise would have likely been an uncollectible debt. (CS86-110)

A call to Toronto releases funds

A family on income assistance was moving to a job opportunity in Toronto. Manpower had given $1,500 towards air travel costs and the husband had gone on ahead to start work and arrange for housing. The Ministry of Human Resources was going to give the wife $500 to cover moving costs as soon as they received a letter of job confirmation from the employer.

The employer apparently sent this letter, but it went astray because the wife and children had already moved from their home in the Interior to her parent's home in Burnaby to prepare for their departure to Toronto. The husband's mother in Kamloops was planning to receive a new letter of confirmation, collect the cheque and ship their belongings. But the Ministry could not give the cheque to anyone but the wife in her husband's absence. If she and the children left the province, the Ministry could not forward the cheque to her. And since the Ministry office in Kamloops had not yet received a letter of job confirmation, they were unwilling to mail her a cheque either directly or through another Ministry office in Burnaby. The departure date was fast approaching and the family could not change its tickets.

The Ombudsman's office telephoned the Toronto employer, ascertained that the husband was on the payroll and relayed this information to the Kamloops office. On the strength of our verbal assurance, the Ministry forwarded the $500 cheque by courier to their local Burnaby office, where the wife collected it one banking day before departure. (CS86-111)

Concern for school friend

A young woman contacted the Ombudsman's office, concerned about a school friend who seemed to be having problems at home. The girl's father isolated her in the home, removing her from school and cutting off all contact with her schoolmates. The complainant had informed Ministry staff of the problem but was worried that no one had intervened to protect her friend.

We investigated and found that the Ministry was monitoring the family situation but had insufficient grounds to remove the girl for her protection. The Ministry had informed her, however, that she could contact a social worker if the situation deteriorated.

Situations like these are difficult. The Ministry staff cannot always tell people like the complainant what is actually happening. In this case, staff were doing what they could but had to respect the family's right to privacy. (CS86-112)

Woman feared for sister

Most complaints to the Ombudsman about the Ministry's investigation of alleged abuse of children are from parents who are being investigated. Sometimes, however, we are called by other family members who believe the Ministry is not taking sufficient steps to protect the child.

For example, we received a call from a young woman, now an adult and living outside B.C. She said that she and two of her sisters had been sexually abused by her father. The youngest girl was still at home, and the woman could not understand why. She said that a social worker had investigated, but had decided not to apprehend her sister without talking to all the siblings.

The social worker needs hard evidence that a child is at risk. Sometimes, it takes a while to gather the information and prepare a plan which will really help the child. And if the child is apprehended, the Ministry can do little to 'hold' teenagers who object to being removed from their home.

In this case, it did work out. The Ministry completed its investigation, apprehended the youngest daughter and placed her in a foster home. Although the final decision rests with the court, at least the woman could feel her sister was safe for now. (CS86-113)

Decision misinterpreted

A family contacted us when the Ministry decided to file a report on its central index of the results of its investigation of an allegation that one of their children was at risk. They said the Ministry had investigated and had concluded the boy was not in danger.

The social worker was concerned, however. There were four small children, including a baby, and the mother worked. The social worker felt that the mother had more stress than she could handle and wanted to offer some relief, such as help with day care resources. As well, the social worker felt that the family had 'neglected' to seek medical advice for a burn and rash. The parents disagreed, saying they knew what to do and had not needed to take the child to the doctor.

What happened here was really a problem of communication. The Ministry's attempt to offer assistance was not made in a way the family could accept. Instead, the parents saw the 'offer' as meaning the Ministry thought they were at fault.

The decision to file a report is reviewable, and so we referred the parents to the appeal process. We also tried to find a way to diffuse the feelings. In this case, the unfortunate process was recoverable, because the parents were concerned about their family.(CS86-114)

What is a good parent?

A woman complained to the Ombudsman that she was being harassed by a social worker. The social worker became involved when members of the community raised concerns that this young mother was screaming at her son and humiliating him in front of his friends and teachers.

Good parenting is a skill we would all describe differently. This mother maintained she was a good parent and that the social worker was over-reacting. The mother admitted that she screamed sometimes, "but doesn't everybody?"

In this case, the social worker did not have sufficient grounds to believe the boy should be removed, but did feel the family would benefit if the mother took some training in parenting skills. The mother finally agreed, and the Ministry's concerns were satisfied. In an intermediary role, the Ombudsman's officer diffused the woman's anger over the incident. (CS86-115)

Ministry of Labour

As in past years, the Ministry of Labour continued to be courteous and cooperative in 1986 in its relations with this office. We are able to resolve most complaints quickly because of the Ministry's prompt and thorough responses to our inquiries. Its willingness to review its decisions, practices, policy and legislation when appropriate is commendable and appreciated by this office and the complainants.

Inquiries	2
Declined, withdrawn, discontinued	34
Resolved: corrected during investigation	10
Substantiated: rectified after recommendation	1
Substantiated: but not rectified	0
Not substantiated	22
Total number of cases closed	69
Number of cases open December 31, 1986	9

Appeal information given

A man requested placement on a six-month training program for disabled persons and was refused on the basis of a suitability assessment by a personnel placement officer.

He complained to the Ombudsman's office that there was no appropriate avenue of appeal open for him to request a review of the decision.

Our investigation determined that there was an opportunity for persons to request a review during a Vocational Rehabilitation course selection process.

The administration manager of the Apprenticeship and Employment Training Program Branch assured this office that any candidate wishing to appeal a decision made by a branch officer concerning any Vocational Rehabilitation Services course selection process could do so by writing to him.

The above information was passed to the complainant who, because he had found alternate employment, did not want to make a formal appeal. In view of his decision our investigation was concluded. The branch will endeavor to make candidates more aware of the appeal process where applicable in the future. (CS86-118)

Funding request mixup

Our complainant applied for funds under the Challenge '86 program at the Apprenticeship and Employment Training Branch in February 1986. He was told by someone at the branch that instead of applying provincially, he should approach the federal government and request funding from them. When his federal funding was turned down, he complained to our office that he believed he would have been eligible for provincial funding under the Challenge '86 program had he been allowed to apply in February.

We found the complainant's concerns were valid. The mix-up had apparently occurred because, on the day of the complainant's visit to the branch, the office was in the midst of a move. In the confusion, he was probably given inaccurate advice. When the branch was made aware of the problem by our office, they agreed to take a second look at his application and, provided he met the eligibility criteria, they would give his application favorable consideration even though it was past the expiration date.

The information was passed to the complainant who then made another funding application which was granted. (CS86-119)

Error in order-to-pay

Our complainant had been working as a concrete finisher in Langley and had filed a complaint with the Employment Standards Branch for outstanding wages owed. The matter was investigated by the branch which found in his favor, and an order-to-pay certificate was filed against the employer.

When we had an opportunity to examine the file, it became apparent an error had been made in calculating the outstanding wages total and the complainant had been underpaid by $148.20. Since the employer had by then paid the amount stipulated on the certificate, the problem arose as to where the additional money should be found to increase the complainant's settlement to the correct amount.

We noted that the ex-employer had, in good faith, lived up to the conditions of the certificate. Therefore, it might be considered unfair to hold him liable for the additional amount. Consequently, we suggested that a payment of $148.20 be made under the authority of the director of the branch. The branch agreed and we were able to conclude our file as resolved. (CS86-120)

Time limit flexibility needed

In 1986, our office received three complaints which centered around the six-month time limit imposed by the *Employment Standards Act* to file a complaint. In the majority of cases, this involves complaints by employees for unpaid wages. The

time limit is taken to be six months from the last date on which payment of wages was to be made.

In our opinion, the three complainants had legitimate reasons for failing to file their complaints within the time limit. In one case, the deadline was missed because the employer continually promised the employee that she would receive her back wages. In another case, the complainant was not aware of the remedies available under the *Employment Standards Act*. We recommended that the branch propose an amendment to the Act which would, in situations where warranted, extend the six-month limit. The branch has agreed with this concept and we understand that an amendment to Section 80 (5) of the Act has been recommended in cases where the circumstances are such that the person making the complaint was, for reasons beyond his or her control, unable to make a complaint. (CS86-121)

Ministry of Lands, Parks and Housing

This Ministry's mandate is the management and allocation of all Crown lands in British Columbia. Most complaints received concern the Regional Operation Division which is responsible for the adjudication of land applications and the administration of existing tenures.

Inquiries	1
Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	6
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	13
Total number of cases closed	26
Number of cases open December 31, 1986	9

Important letter lost

About 20 years ago, a man built a small cabin in the Skagit Valley, claiming he had received permission from the Forest Service to do so. When the Skagit Valley Recreation Area was created by Order-in-Council in 1973, he applied for a resource use permit for his cabin. His application was denied and he was notified by registered mail on February 24, 1975 that he must vacate the site by September 30, 1975. The man then approached his MLA and asked him to intercede and subsequently heard nothing further from the Ministry until March 1985 when he was informed that a resource use permit would be issued if he could provide a copy of the original authorization he said he had received from the Forest Service. When he could not produce this authorization, he contacted the Ombudsman's office.

According to the complainant, he had given the letter of permission from the Forest Service to his insurance agent when he took out insurance on the cabin shortly after it was built. Enquiries to the insurance company revealed that records were kept only for seven years. The complainant could not recall the name of the insurance agent with whom he had dealt. The Ministry agreed that it would accept a statutory declaration from the complainant in lieu of the letter of permission. However, the complainant was unable to make a declaration with the required degree of detail as to who granted the right to build the cabin, when and for how long, because so many years had passed.

Since the complainant could not substantiate in any way the fact that the Forest Service had authorized him to build the cabin, we could not fault the Ministry for initiating trespass proceedings. (CS86-122)

Mortgage figure checked

The purchaser of a mobile home complained to our office because his B.C. Second Mortgage was not as much as he expected. He thought he was eligible for $10,000, but his B.C. Second Mortgage amounted to $9,400.

Our investigation found that the Ministry had given him the proper amount. An individual is required to hold equity of at least $2,000 or five per cent of the value, whichever amount is larger. The complainant's mobile home had a purchase price of $28,000. The equity he was required to have was $2,000. His first mortgage amounted to $16,600, which left a balance of $9,400 to be covered by a B.C. Second Mortgage. (CS86-123)

Ministry of Municipal Affairs

Complaints against this Ministry arise most often from an action by a Municipality or a Regional District. Having been dissatisfied with a decision by a Municipality or Regional District, a complainant seeks corrective action via the Ministry of Municipal Affairs. The latter may not, however, be able to intervene legally due to the delegated authority held by the Municipality or Regional District administration. Beyond that, the Ministry does extend its assistance through the office of the Inspector of Municipalities. Our relationship with the Ministry is very sound and a strong effort is put forth to assist complainants within the bounds of the Ministry's legal capabilities.

Inquiries	1
Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	5
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	18
Total number of cases closed	31
Number of cases open December 31, 1986	2

No Homeowner Grant for estate

A man contacted the Ombudsman's office to say that he was acting as executor for his brother-in-law's estate. As executor, he had attempted to apply for the Home Owner Grant at the time that property taxes for the deceased's condominium fell due. However, he was told that only a surviving spouse or relative would be allowed to claim the grant. Since the condominium was to be sold, not passed on to a relative, he felt this decision was unfair.

The *Home Owner Act* was studied and it was found that the information provided already to the complainant was correct. The Act states that "an owner of an eligible residence who occupies it as his principal residence is entitled to a grant in respect of that residence." Section 2(a) subsection 3 provides for a surviving spouse or relative to claim the grant for the eligible residence where the property is the survivor's principal residence. This Act, plus the definition of 'owner' in the *Municipal Act*, to which the former Act refers, means the surviving spouse or relative who stays on living in the property will be considered the owner and be allowed to claim the grant. The intent of the legislation, then, appears to be to allow the benefit of the tax reduction where an 'eligible property' is being occupied as a principal residence. In other words, the property must be occupied by the owner on a regular basis as his home.

Based on our study of the legislation, the complaint could not be substantiated. (CS86-124)

Thinly-veiled threat

In 1984, the complainants owned property in New Westminster located adjacent to the proposed Sky Train route. That year, representatives of B.C. Transit initiated negotiations with the couple to obtain a portion of their property. The process stalled when the parties could not agree on a suitable price.

Shortly after the parties reached a stalemate, a lawyer acting for B.C. Transit wrote the complainants a letter which, in their opinion, contained a thinly-veiled threat that unless agreement was soon forthcoming on a final price for the portion, the authority would entertain the idea of expropriating the entire property.

Our office investigated the complaint and our findings for the most part agreed with the concerns expressed by the complainants. The wording and tone of the offending letter was not consistent with the 'fair play' principle expected of a public body.

B.C. Transit officials agreed with our perception and assured our office that future negotiations will adhere to the principle of fairness. Despite the threatening letter, the complainants were able to resolve the issue with B.C. Transit and have sold part of their property to the authority for a fair price. (CS86-125)

Inspector's help sought

A complaint was received that the Ministry of Municipal Affairs, specifically the Inspector of Municipalities, had not given sufficient support to a resident's request for a rezoning application. The property, situated in a municipality, was less than the minimum size required for multi-family development and the application was refused on that account. It was, however, the only single-family lot remaining in an area otherwise developed for multi-dwelling use.

The investigation confirmed that by legislation, this municipality has control over rezoning issues. Nonetheless, the Ministry recognized the logic in the resident's application. The community plan supported multi-dwelling development and the resident questioned the wisdom of leaving one single-family dwelling within the area.

Subsequent to our enquiries with the Ministry, the Inspector of Municipalities did correspond with the municipality on the complainant's behalf, putting

forth the reasons for reconsideration. The municipality held that it was compelled to sustain the refusal because of the lot size. This left the Ministry with only the possibility of holding a public inquiry under Section 745 of the *Municipal Act*. It decided the issue did not warrant such an inquiry.

Evaluating the legislated restriction on the Ministry and the effort put forth, the Ombudsman's investigation concluded that the Ministry had indeed exercised all avenues open to it.

In the end, the complainant negotiated with a developer who owned land adjacent to his. The properties were subsequently joined and developed. (CS86-126)

Ministry of Post-Secondary Education

The Ministry, now Advanced Education and Job Training, had its responsibilities reorganized twice during 1986. For simplicity, we are reporting as if it had continued with the programs for which it was responsible January 1, 1986.

Despite that, we want to comment about one issue that is now the responsibility of this Ministry, though formerly with the Ministry of Education. Many of the complaints against this Ministry involve applications and approvals of student loans. Backlogs have increased with demand, especially for those students applying for loans for study out of the province. It can take 10-12 weeks to process even a straightforward request for an out-of-province student. Such delays are understandable, given the demand, and the lesson for students is that they should apply early and be prepared to support themselves for the first couple of months of the term.

Inquiries	2
Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	7
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	4
Total number of cases closed	17
Number of cases open December 31, 1986	1

Student felt forced out

A woman complained that a college had forced her out of its nursing program unfairly. She claimed that the college was acting in collaboration with several other colleges in an attempt to bar her from the nursing profession. She based this assumption on the fact that she had run into difficulties at five different institutions.

An investigation revealed that the woman's failure at the college was not linked to her earlier attempts at the other educational institutions. Since the woman had not attempted to gain credit for her earlier work, the college was unaware that she had, in fact, attempted the nursing program at other institutions. Her failure was due to difficulties in the 'clinical' part of her course.(CS86-127)

Tendering practices reviewed

In February 1983, we received a complaint from the principal of a cleaning company about tendering procedures used by a college in awarding janitorial contracts for its campuses. The revenue of colleges comes largely from public funds and it was determined that the Ombudsman had jurisdiction to investigate the complaint.

Bids were solicited for five separate items. The tender documents instructed contractors to submit a bid on each item for which they wished to be considered. Twelve companies submitted bids and all bids were read out publicly when tenders were opened. Two days later, one company which submitted bids on only three items was allowed to "clarify" its bid. This "clarification" resulted in different rankings on individual items.

Our concerns were simple. Is it reasonable for a public agency to allow new or altered bids after a tender has closed? Shouldn't a public agency have clear and fair guidelines to cover the tendering process? Lastly, we had to address the complainant's concern that the college had not responded to his complaint. Instead, it had written to him, stating that the matter was referred to a lawyer as being "of a possibly libellous nature."

After a long investigation into the complaint, considerable progress was made towards more accountable procedures. Guidelines on public tendering procedures were formulated and issued by the Deputy Minister of Post-Secondary Education and sent to all British Columbia college and institute principals and bursars. In addition, the college adopted a new practice whereby responsibility for public tenders would be assumed by the bursar. That is important because of the expertise built up when the same person remains responsible. (CS86-128)

Ministry of Provincial Secretary and Government Services

The Ministry performs a large variety of services, most of which are internal to government operations. Examples are; government-wide postal services, printing services, advice on records management, as well as vehicle management and risk management. External programs operated by the Ministry relate to matters such as Special Project Grants and the administration of the First Citizens' Fund. Considering the diversity of tasks in which the Ministry is involved, the number of complaints received was very low.

Inquiries	5
Declined, withdrawn, discontinued	10
Resolved: corrected during investigation	11
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	14
Total number of cases closed	40
Number of cases open December 31, 1986	8

Letter's delay a problem

A man, whose application for a Special Project Grant had been approved many weeks before, contacted the Ombudsman's office when the official letter of approval was delayed. He had been unable to start construction on his seasonal project, because his bank would not release loan funds without government confirmation of the grant monies.

The Ombudsman's office contacted the minister's office. A staff member prepared the necessary letter and hand-delivered it to the office of the man's MLA in the Parliament Buildings. From there, it was sent via facsimile machine and delivered to the MLA's constituency office. The man was able to pick up the copy and deliver it to his banker that same morning and get on with his project. (CS86-129)

Delay in bursary

A complaint was made to the Ombudsman's office that a Native student who applied in September for a bursary from the First Citizen's Fund (FCF) still had received no funds by early April.

Enquiries were made with the Ministry of Provincial Secretary and Government Services. It was found that this particular student's bursary had just been approved along with a large group of other applications for bursaries and special project grants. Since between two and four weeks might normally pass from this period until the cheque was requisitioned, printed and sent out by the Student's MLA or the minister, the FCF asked that processing be 'rushed.'

We took this opportunity to discuss the overall processing of bursaries with the Ministry. This focused on:
a) forewarning students in hand-out material that funds would be paid only after confirmation of first term standings and,
b) future streamlining of the approval process.

The acting director said plans were underway to clarify brochures and applications. Other steps presently under consideration might, once implemented, serve to decrease delays in the payout of these funds.(CS86-130)

Lottery licence suspension

A lottery ticket retailer complained that he had been denied a 6/49 'quick-pick' machine. He also said that he had had his licence to sell tickets suspended before and that this had caused him problems with his customers.

With regard to the first complaint, investigation showed that the small community's other ticket seller had been chosen over the complainant for the town's only machine. This was due to the competing outlet's general acceptance, size and location and especially due to its consistently higher ticket sales in the past. The town's population did not warrant a second machine at this time.

The second concern, about cancellation of the retailer's licence, was also investigated. The corporation began charging $100 for retailer licences in early 1985. When the complainant had apparently refused to pay the fee, his licence was suspended. Then, in March 1985, he paid the $100 and simultaneously sent in an order for tickets, but the order was not processed because a re-application had to be completed. This was completed by June when a representative visited the area. Since the complainant had caused his own suspension, it was found that the corporation had not acted unfairly, and the matter was concluded. (CS86-131)

Superannuation Commission

The Superannuation Commission administers nine pension plans. It has some 150,000 contributors and issues pension cheques to approximately 38,000 pensioners. During the last year, about 11,000 individuals applied for and received a refund of their contributions. Assets held under the nine pension plans total $8.5 billion. While the volume of transactions conducted by the Commission is considerable, the number of complaints our office receives is small.

Booklet confusing

A man complained that the Superannuation Commission had told him that, even though he would have 35 years of service with B.C. Corrections by age 52, he would not be able to retire with full pension until age 55. The man contended that the Commission's booklet "Public Service Superannuation Plan" had suggested that it was possible to retire with full pension between the ages of 50 and 55, if one had accumulated 35 years of service. Therefore, he felt he should be able to retire at age 52.

Our investigation found that the *Pension (Public Service) Act* (S.15(1)(b)(i)) allowed for retirement at age 55 with full pension after 35 years of service. B.C. Corrections employees may retire as early as age 50, but do so with a reduced pension. However, we found that the booklet "Public Service Superannuation Plan" was sufficiently ambiguous as to cause some confusion about the issue. This problem will be corrected at the next printing of the booklet. (CS86-132)

Lost pensionable time

Because of injuries sustained in a car accident in 1974, a woman missed seven months' work near the beginning of her career as a public servant. At that time, she was not informed that she could have continued to contribute to the superannuation fund during her time off work and as a result, she lost some pensionable time.

In 1983, she requested she be allowed to make a retroactive payment for this missed period of time but was refused by the Superannuation Commission, on the grounds that payments are required to be made during or immediately following such absence.

When we contacted the Superannuation Commission on her behalf, the matter was quickly resolved in her favour. The Commission noted that there was no indication that the complainant had ever been informed of her choices in this situation. The deadline for making up missed contributions is not specified in the legislation, but rather in the form which the complainant never received. She was allowed to make up the lost contributions with interest.(CS86-133)

Urgent need for pension money

Government employees are required to contribute to the Superannuation Fund. Upon terminating employment, employees may then receive a refund of the amount paid.

A man who had recently left the service complained that he had been waiting for his refund from the Superannuation Commission for three weeks. While the process for issuing a refund usually takes up to eight weeks, we contacted the Commission to enquire as to the status of the complainant's refund. We informed the Refund Supervisor that the complainant was in urgent need of the money. The supervisor told us that the refund cheque would be available the following day and in order to eliminate any delay, she agreed to send the cheque by courier to the man's home. (CS86-134)

Ministry of Transportation and Highways

With the continuing expansion and improvement to the Province's highway system, the potential for public concern and complaint is very wide. Following up on the concept that addressing any misunderstanding or complaint at the earliest possible time is beneficial to all, the Ministry has responded to Ombudsman investigations with concern and cooperation, although quick decisions are not always possible because of the complexity of the issues.

Inquiries	6
Declined, withdrawn, discontinued	39
Resolved: corrected during investigation	43
Substantiated: rectified after recommendation	1
Substantiated: but not rectified	0
Not substantiated	74
Total number of cases closed	163
Number of cases open December 31, 1986	39

Highway construction hurt business

A man complained to the Ombudsman's office that his motel's income was seriously reduced because of highway construction in his area.

The construction closed the highway for periods of three to five days per week and on one occasion, for an entire five-week period. Although this work was done in the fall and spring months, normally the 'shoulder seasons' in the motel business, his business would normally have met basic operating expenses. During construction, however, it did not.

Once complete, the new route went past the rear of the motel and various off and on ramps allowed traffic to completely bypass the motel, resulting in an on-going decrease in business.

Our investigation showed that the closures of three to five days per week were necessitated by the construction. The lengthy closure resulted from the danger of a mudslide onto the construction area. To minimize this lengthy closure, authorization was given for the work to proceed on a seven-day-per-week, 24-hour-per-day basis. There is no doubt that the complainant lost income as a result of this construction. Even during periods the road was open, the gravel surface, obvious construction work, signs identifying a paved alternate route and public radio announcements about the route under construction, all contributed to a diminished traffic flow past this motel.

There is, however, no legislation or policy allowing for compensation for loss of business under these circumstances. The Ministry is fully aware that its construction work anywhere in the province may adversely affect business income. That is an inevitable, temporary result of efforts to improve the highway system. The complainant was encouraged to review his insurance policy for possible compensation. However, the procedures of the Ministry could not be faulted, and this man's only remaining recourse appeared to be civil court action against the Ministry. (CS86-135)

Low fare not advertised enough

A resident from the Gulf Islands complained that the policy which allows senior citizens resident in B.C. to travel free on ferries Monday through Thursday of each week was not advertised enough to allow all qualified persons to benefit.

Related to this complaint were secondary issues: should all senior citizens in Canada benefit from this privilege; rather than the 'no cost for the four days', would it be preferable to have a 'half-fare for seven days' policy.

Due to its administrative responsibility for this aspect of the B.C. Ferry Corporation, our office initiated discussions with the Ministry of Transportation and Highways. The Ministry and corporation authorities agreed with the complainant and action was taken immediately to display suitable signs at all ferry terminals. The corporation was also considering greater exposure by including a note in future schedule brochures.

The two related issues were acknowledged by the Ministry and the corporation, but required study of their financial impact. (CS86-136)

Man suspected blacklisting

A former employee had been unsuccessful in finding work with the Ministry and suspected he had been blacklisted. We found that this was not the case, but that the potential for preventing his rehire did exist. The final separation report in his personnel file contained some comments which were not favourable. This particular report form, which called for subjective comments, is no longer used in the public service. It clearly could place the employee in a relatively poor position for rehire, although in fact no one seems to have referred to the file since his termination.

At our request, the Ministry agreed to remove the separation report from the personnel file. The Ministry also undertook to ensure that negative comments

would not be made if someone should ask for an oral reference.(CS86-137)

Walking path problems

A resident of a rural, semi-isolated area complained to the Ombudsman's office that a walking path on his property was being developed into a public road. He claimed the Ministry of Transportation and Highways and pedestrians were trespassing on his land.

The path actually angled diagonally across the complainant's land and the land of his adjacent neighbours. The Ministry claimed the route was a public thoroughfare under Section 4 of the *Highway Act* by virtue of the fact the Ministry had spent money to start developing it. It planned to develop it to accommodate increased tourist traffic. Tourism interests involved advertised boat trips combined with a walking tour through the community.

Occasionally, the Ministry will claim that a publicly-used road or pathway on private property is public in areas where no public rights of way have been surveyed. Our investigation disclosed that the area in which the complainant lived had, in fact, been surveyed and public rights-of-way established sometime around the turn of the century. The four 5-acre private parcels involved were surrounded by undeveloped rights-of-way. Therefore, the complainant saw no need to use his property and that of his neighbours.

Through negotiation by the Ombusdman's officer, the Ministry agreed that if its existing rights-of-way were developed to a standard comparable with the walking path, it would not press the case on the status of the path. The Ministry offered to fund a local improvement project if the residents formed a society to carry out the work, a Ministry policy requirement.

This matter took about two years to resolve. The Ombudsman's office was periodically called upon as arbitrator even after the actual investigation closed, but the results justified the effort. The minor funding resulted in a right-of-way with a fine, gravel-surfaced road. Water and Hydro lines are accommodated and access made available to other residents who would not otherwise have had it. It was a case where confrontation evolved into cooperation to the satisfaction of all. (CS86-138)

Settling on price for land

The owner of a 10.5-acre, 9-hole golf course complained to the Ombudsman in November 1985 of an excessive delay by the Ministry of Transportation and Highways to settle a claim for compensation. The Ministry required 1.71 acres through the centre of the golf course for a new freeway. The project was started in 1980. Land appraisals were obtained in late 1980 and early 1981.

Normally, in the course of developing a highway, the Ministry makes its plans known far in advance of actually needing the property. However, it was the Ministry's practice to negotiate with property owners who wanted to come to a sale agreement even before the Ministry required the land. If owners did not, the Ministry waited until lands were actually required before entering negotiations.

This particular issue was complicated by the nature of the land, a golf course, and a fluctuation in land values in the 1983-85 period when this man was waiting for the Ministry to negotiate for his land.

Both the complainant and the Ministry wanted to reach a settlement. The Ombudsman's office arranged productive discussions where fair market values, land improvements, injury to remaining land, interest, legal costs and surveying were analyzed. The Ministry agreed that in these types of negotiations, professional appraisals should be shared at an early stage by both parties. The Ombudsman's office acted as investigator, mediator and negotiator. This contributed to a satisfactory resolution being reached in late 1986 whereby the complainant and the Ministry agreed to an offer substantially increased from the original. (CS86-139)

A road on Native land

A complaint was lodged that the Ministry had been negligent by not legally securing a road. About 1970, by mutual agreement with the Native Band Council, the Ministry relocated the road for safety reasons, placing it on native land. The new road was paved and, in the passage of time, the old road was never

relinquished nor the land on which the new one was located formally purchased.

Private properties were acquired and developed which necessitated use of the road. One property was a guest ranch. Over the ensuing years, the Band Council's personnel changed and native land claims became an issue. Finally, the Band Council posted private property signs and verbally refused to allow "commercial" traffic use of the road. The owner of the guest ranch complained to the Ombudsman's office that this drastically lowered his income.

Our investigation revealed the Ministry had initiated negotiations, though progress was slow. No traffic disruption had occurred in a two-year period and while a confrontation was not desired, the complainant's clients may not have been stopped. As a backup, the former road, now in disrepair, could be made accessible if the negotiations failed. Under these circumstances, the complaint that the Ministry was negligent could not be substantiated. In addition, the complainant also had the option of making arrangements with the Band Council, or attempting to have the signs amended to read that the road is on native land and that travel was permitted through the courtesy of the Band Council. (CS86-140)

Motor Vehicle Department

The Ministry is also responsible for the operation of the Motor Vehicle Department. In 1986, we received an average of five complaints a month about the Driver Licence Division of the Motor Vehicle Department.

Among his other duties, the Superintendent of Motor Vehicles is responsible for monitoring the driving records and medical fitness of B.C. drivers. Discretionary decisions made by the Superintendent and his staff about driving records and medical fitness may adversely affect individual drivers.

More than 2.3 million people currently hold B.C. driver's licences and the Division's latest figures show that more than 72,000 new B.C. driver's licences were issued in 1985. To put the number of complaints in perspective, about 10,000 prohibitions from driving were imposed by the Superintendent last year and the Driver Licence Division reviewed about 40,000 medical reports.

The Ombudsman's office continues to enjoy an excellent working relationship with senior Driver Licence Division officials and most complaints against the division are quickly resolved or found to be not substantiated.

Notice not received

A veteran complained that the Motor Vehicle Department was unfairly requiring him to pay $60 for reissuing his Class 1 driver's licence. The department had suspended his licence because he forwarded a required medical report too late.

The man said he could not pay this charge until he received his Veteran's Allowance cheque, but this delay would mean losing a full-time job as a taxi driver.

Class 1 (commercial) drivers are required to submit medical reports at the ages of 40, 50, 55 and 60 years, and every two years thereafter. This man's medical report was sent to the Motor Vehicle Department about two weeks after he received a notice of prohibition from driving. Later, he sought clearance from the local RCMP to follow up on a job offer as a taxi driver, a standard procedure for such jobs, and his driver's licence was taken away from him. Only then did he learn of the re-instatement charge. He then contacted the Ombudsman's office for assistance.

The complainant said that he never received the initial request for an updated medical report, that he only received the superintendent's 'reminder notice' a few weeks before he was prohibited from driving. He did not take immediate action because he believed his doctor was on holiday. Further, the complainant said that he did not object to being temporarily without a licence when he received the 'Notice of Prohibition from Driving' because he thought that he should wait until he had an opportunity to see his doctor.

The circumstances of this complaint were discussed in detail with Motor Vehicle Department officials. They felt that the action taken was not unfair because the department had no knowledge of the complainant's circumstances. He did not complain about the prohibition until several weeks after he received the notice prohibiting him from driving. Had the complainant contacted a driver's licence office upon receipt of either the reminder notice or the prohibition notice, an extension would have been granted.

The complainant raised two further issues. First, he felt that all notices should be sent by registered mail instead of just the prohibition notice. Unfortunately, the great number of medical notices sent out each year made this sugggestion too expensive. Second, the complainant felt that the reminder notice should

have provided more specific information on the consequences of failing to respond. The existing notice stated only that immediate action was necessary or 'further action' would be taken. The complainant felt that he should have been told that he would be prohibited from driving if he did not respond immediately.

The deputy superintendent of Motor Vehicles agreed that the specific consequences of failing to respond should be stated in the reminder notice. Therefore, the reminder notice was amended to clearly state the consequences of non-compliance. As it turned out, this change restored the old form of notice. Reference to a prohibition from driving had previously been deleted, in response to a complaint that the wording suggested a criminal proceeding and was inappropriate when requesting medical reports.(CS86-141)

Need for medical report waived

The mother of a 17-year-old diabetic objected that her son had been required to submit a second medical report to the Motor Vehicle Department one year after he obtained his driver's licence. She said that her son had been a diabetic for 12 years and that his condition was stable. She felt the requirement was discriminatory and said that a further medical report would cause her unnecessary expense. The medical fee was $37.50 for the original report one year previous.

Upon investigation, we were informed that the request for the second medical report in this case was a department policy, based on medical advice that early-onset diabetics tend to be more subject to deterioration. This policy appeared not to apply in this case, because the complainant's diabetes was not deteriorating. The Motor Vehicle Department therefore agreed to waive the requirement of a second formal medical report, upon receiving medical confirmation that the complainant's condition was stable and had not deteriorated. This could be provided in a letter from his doctor, at no cost to the complainant. Assuming that this information is provided to the department, a further medical report should not be required for a period of years.(CS86-142)

Need for road test disputed

A young Alberta woman born with spina bifida complained that the B.C. Motor Vehicle Department was unfairly requiring her to take a road test because she is confined to a wheelchair.

Spina bifida is an exposure of the spinal cord which can result in paralysis, depending upon the degree of exposure and the location of the lesion. The complainant said her condition is not degenerative and that she passed a road test in Alberta about five years previously. She is restricted to using hand controls because of paralysis in her legs.

This woman felt the Motor Vehicle Department discriminated against her because of her disability, since it does not normally require an Alberta driver to take a road test before issuing a B.C. driver's licence.

Our investigation revealed, however, that where a person has an apparent disability which may affect the safe operation of a motor vehicle, a road test is not waived. The department's reason for this exception is that a disabled person's condition may deteriorate. A new road test is considered to be in the interests of public safety.

The complainant contended she had medical evidence to show that public safety was not a concern in her particular case. The department agreed to give her an opportunity to provide the medical evidence, in support of her request for waiver of the road test. This resolution appeared to address the concerns of both the complainant and the Department. A medical report is normally required in any event, where an out-of-province driver is considered to have a medical condition which may affect driving ability. (CS86-143)

Translator allowed

A former Quebec resident said she was unable to obtain her learner's driving permit because she could only speak and read French and the written examination must be completed in English, though she would be allowed to use a French-English dictionary. Because of the complainant's rudimentary knowledge of English, she felt that a French-English dictionary would be of little assistance to her.

Federal law requires the use of both official languages in federal government administration. However, this requirement does not apply to provincial government agencies such as the Motor Vehicle Department. The Superintendent of Motor Vehicles nevertheless adopted a new policy in August 1986 to assist individuals who do not speak English. Under this new policy, a person must attempt the written examination once without the assistance of a translator. If unsuccessful, a translator may be used (at the expense of the applicant) for a subsequent attempt.

Court Services in the Ministry of Attorney General keeps lists of approved translators, which are also acceptable to the Motor Vehicle Department. The Superintendent has instructed local Motor Vehicle offices to obtain a copy of the court-approved list, where available. Where a particular court does not

maintain a list, the office manager of the Motor Vehicle Department may exercise discretion to accept an appropriate translator.

As the complainant had already failed the written examination before the Superintendent's new policy came into effect, it was confirmed that she could now engage a translator. (CS86-144)

Age discrimination alleged

A 75-year-old man said that the Superintendent of Motor Vehicles' request for a medical examination was improper discrimination on the basis of age, contrary to the Charter of Rights and Freedoms. He objected to paying for a medical examination as he said that he had no medical problems.

To carry out his mandate to monitor the medical fitness of B.C. drivers, the Superintendent has adopted a policy which requires all drivers to undergo a medical examination at age 75, 80 and every two years thereafter. Updated medicals are required at a much earlier age for commercial drivers and at specified intervals thereafter. Such examinations may bring to light a problem which would not otherwise come to the attention of the Superintendent.

We did not question the complainant's account of his own good health. However, it is generally the case that medical problems arise more frequently as individuals age. And the Superintendent's policy applies uniformly to all persons who reach the age of 75.

We reviewed the law on equality rights provisions of the Charter and concluded that the Superintendent's policy is not discriminatory within the meaning of section 15 of the Charter which prohibits discrimination on the basis of specific grounds, including age. According to a B.C. Court of Appeal interpretation of this section, to be discriminatory, a policy would have to be deemed not reasonable or fair, considering its aim and purpose. We concluded that the policy was neither unfair nor contrary to the Charter of Rights and Freedoms. (CS86-145)

Anti-seizure drug the problem

A 45-year-old garbage collector was upset that the Superintendent of Motor Vehicles cancelled his Class 3 driver's licence. He needed this licence for his job.

The Superintendent's decision was made for medical reasons. The complainant had suffered a seizure some 20 years previously and had been on anti-seizure medication since that time. He had been employed by the City of Vancouver for almost 13 years and had held a Class 3 driver's licence without incident for six years. His case came to the attention of the Motor Vehicle Department because when he turned 45 he was required to submit a new medical report. For some reason, the complainant's initial medical report for his class 3 licence had not contained any reference to the seizure.

Both the complainant's physician and neurologist strongly supported the reinstatement of the complainant's licence. However, the Superintendent's medical consultant insisted that the case was governed by the department's medical guidelines on commercial class driver's licences. The consultant said that a Class 3 driver's licence cannot be issued until a person had been seizure-free for 10 years and off anti-seizure medication for at least five years. The complainant's case did not meet the criterion. Nevertheless, his doctor was prepared to reduce or discontinue his medication if this would assist him in securing the re-instatement of his driver's licence..

The Supreme Court of British Columbia decided in 1981 that the Superintendent must look at the individual case and cannot rely exclusively on general medical quidelines with respect to particular medical conditions. Further, an Ontario court recently ordered the reinstatement of an ambulance driver's licence on the basis that a seizure experienced by the ambulance driver was an isolated incident, based on the medical evidence in the case.

After some discussion, the Superintendent agreed to review the decision on this case. Subsequently, a restricted driver's licence was issued, which enabled the complainant to continue in his employment. The complainant was very pleased with this resolution which ended months of worrying. (CS86-146)

B.C. Assessment Authority

Our involvement in complaints about the B.C. Assessment Authority is often limited because of the appeal process which exists through the Courts of Revision and the Assessment Appeal Board. Our limited statistics would also seem to indicate that many taxpayers avail themselves of the legislated right to appeal when they are dissatisfied with their assessment.

In cases where property owners do contact our office, we are able to clarify their concerns, either by calling the BCAA ourselves or by putting them in touch with the correct official there. This may serve to help prepare a complainant to make his submission to a Court of Revision or, in some cases, to avoid an appeal altogether. The limited contact we have had with BCAA officials has continued to be cordial and often staff have extended themselves greatly to offer assistance to the public or clarification to our office.

An issue raised in the 1985 Annual Report was that of access to BCAA property information. Area assessors met during 1986 to discuss this matter. The result was reiteration of the policy that, in general, all information regarding a property should be accessible to the property owner. Limited information, basically that which is on the assessment notice, should be made available to the general public. There are apparently two reasons:

1) the BCAA wishes to protect the confidentiality of the data it is empowered by legislation to obtain for assessment purposes only, and
2) some concern exists about area offices' ability to deal with detailed enquiries during the peak roll completion and appeal period.

Given the limited number of complaints on this issue received recently and the BCAA's real concerns, this appears to be a matter that we should continue to monitor, dealing with it in the meantime on a case by case basis where it arises.

Inquiries	0
Declined, withdrawn, discontinued	10
Resolved: corrected during investigation	5
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	7
Total number of cases closed	22
Number of cases open December 31, 1986	10

Tax notice not mailed

A man acquired property for the first time in B.C. in 1983. By December, he had not received any property tax notice so he made enquiries about taxes due and paid them. He was also told he must pay a penalty for late filing. He refused to pay the penalty and tried, without success, to make the municipality understand the unfairness of the situation.

The municipality asserted that the failure to mail out a tax notice had not been their fault, since the man's name was not on the assessment rolls at the time the notices are mailed out. The B.C. Assessment Authority, which is responsible for changing names on the assessment rolls, claimed it had not received notice of the change of ownership of this property from the Land Titles Office.

Through investigation, an error was found to have been made on the land transfer document. On this document, the assessment district description was noted incorrectly, so the document had gone astray. However, such a description, right or wrong, was not intended to be placed or used on the document, although many offices do so informally. The Land Title Office was also exonerated.

Efforts to lay the blame were discontinued. The Ministry of Municipal Affairs was asked to help persuade the municipality that it would be fair and reasonable to excuse the penalty. The municipality wrote the necessary request to the Minister. Normally, penalties cannot be cancelled nor refunds made in taxation matters. The Minister of Municipal Affairs does have the discretion to allow cancellation or refunds in individual cases. The Minister signed the necessary order, and the complainant was finally satisfied. (CS86-147)

Tax on leased land

A complaint was received from a lessee of the Ministry of Lands, Parks and Housing with regard to the classification of the land he leased. He was allowed to use it for grazing only and found it ludicrous that the land had been classed as 'residential.' The man had leased the same land in the past and it was then classified as 'agricultural'.

He had paid his 1985 taxes in order to avoid a penalty when he received his tax notice at the last minute. He then appealed the assessment to the Court of Revision but lost.

Our office made enquiries with the B.C. Assessment Authority. These revealed that when the lease lapsed, then was renewed, the onus was on the leaseholder to re-establish farmland classification by showing records of enough agricultural income to meet the minimum requirements for the class. The

man was therefore advised on how to appeal effectively to the Assessment Appeal Board.(CS86-148)

Separate assessment disputed

A property owner complained that the B.C. Assessment Authority had erred in assessing his land as five separate parcels. He argued that the parcels were land-locked and located in a floodplain, and were therefore of very little commercial value. Except that his house was situated on one part of the property, the rest of the land was unused. He felt the separate assessments would produce a greater total than if they were assessed as one parcel. The complainant was also concerned because the municipality would charge him a parcel tax for each separate assessment.

Enquiries were made with the BCAA and the relevant legislation was reviewed. The *Assessment Act* requires the assessor to make reference to Land Title Office records, which in this case showed the land divided into the five separate parcels. Therefore, we found the complaint to be unsubstantiated. We advised the property owner that he could apply to the Land Title Office to have his lots consolidated. But this would have no effect on the current year's assessment.(CS86-149)

Appeal deadline missed

A man complained to the Ombudsman's office in June 1986 that the assessment of property he recently acquired was too high. The land and improvements had been assessed at $36,400, but the house had been abandoned for several months before the purchase and its condition had deteriorated considerably. The purchase price was $15,000.

The man had missed the deadline for an appeal to the Court of Revision, but felt that the B.C. Assessment Authority should take the condition of the house into account and reassess the property. The Ombudsman officer discussed the situation with the local assessor. He explained that the value of the land could not be readjusted, but that the value of the improvements could be, given the history of this property. He agreed to consider lowering the value of the improvements based on a new appraisal. We passed this information on to the complainant and considered the complaint resolved.

The complainant telephoned our office again in October 1986. He had not received a reassessment notice. We again contacted the local assessor who indicated that the value of improvements had been reassessed from $18,600 to $5,850. But, due to an administrative oversight, the new appraisal had been applied to the 1987/88 taxation roll and not to 1986 as originally intended.

The assessor told us a supplementary assessment for 1986 would be processed and that the complainant would receive an amended tax notice. We again closed the file as resolved. (CS86-150)

British Columbia Building Corporation

Inquiries	0
Declined, withdrawn, discontinued	2
Resolved: corrected during investigation	3
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	1
Total number of cases closed	6
Number of cases open December 31, 1986	0

Bid deadline missed

A Dease Lake resident complained that he was not given an opportunity to bid on an old forestry building located across the street from him. He had long been interested in purchasing the building which was put up for tender by the British Columbia Building Corporation. The complainant's tender of $100,018 was returned unopened on the basis that it was received after the deadline for submission of bids.

The complainant's objections to this decision were two-fold. First, he said that no local notice of the tender had been provided in Dease Lake, although local people were interested. The complainant had only learned about the sale accidentally, not long before the deadline for submission of bids. His second objection was that he was given to understand by a BCBC official, two days before the deadline, that it would be acceptable for him to phone in a bid to Terrace, to be followed up with a written offer and deposit as soon as possible. Terrace, which was the closing location for the submission of tenders, is located some 700 kilometres from Dease Lake. The complainant maintained that if he had not been told to telephone Terrace, he would have driven to his bank in Cassiar and then overnight to Terrace, in order to meet the December 7, 1984 deadline.

It was possible to corroborate important aspects of the complainant's understanding that a telephone bid would be accepted, with a deposit to follow. Further, the complainant was correct in saying that there was no local notice of the sale. Although advertisements had been placed in several newspapers, these publications were only available in Dease Lake by subscription.

By the time the complainant contacted our office, the building had already been sold for $78,500 to another bidder. While it was not possible to interfere with the existing arrangement, it was apparent that the complainant had incurred certain out-of-pocket expenses in connection with the submission of his rejected tender. We met with two senior executives of the B.C. Building Corporation to discuss our findings and it was agreed that BCBC would compensate the complainant in full for his expenses. After the meeting, the complainant provided records of all his expenses, which came to almost $300. This amount was paid in full by BCBC.

Senior real estate staff in BCBC demonstrated an impartial and honorable approach to this complainant and the complainant was pleased with the resolution provided by BCBC.

On its own initiative, BCBC also instituted a number of changes in its public tendering procedures designed to prevent a repetition of this sequence of events. These procedures included the posting of notices locally, the provision of a toll-free telephone number to senior real estate staff in Victoria and the clarification of procedures to ensure that all questions of a technical nature relating to the public tender process were referred to Victoria. (CS86-151)

B.C. Hydro and Power Authority

As in past years, B.C. Hydro staff continue to be cooperative and prompt when assisting our office to resolve complaints.

Again in 1986, the bulk of the complaints against B.C. Hydro concerned the collection of overdue accounts. In reviewing the pattern of complaints received over the previous five years, it became apparent that individual complaint-handling had been unable to prevent the recurrence of many types of complaints.

As a response to this observation, the Ombudsman and the President of B.C. Hydro agreed that the Ombudsman's office would be invited to design and implement a study of selected components of B.C. Hydro's billing and collections operations. The objectives of the study are to enhance the effectiveness and fairness of Hydro's collection operations with a view to reducing the need for third party intervention.

The study was launched in late 1986 with the establishment of a Coordinating Team consisting of two members from the Ombudsman's office and two Hydro staff members. A public report is expected by mid-1987.

Inquiries	12
Declined, withdrawn, discontinued	95
Resolved: corrected during investigation	167
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	47
Total number of cases closed	321
Number of cases open December 31, 1986	8

Mistake not corrected

A woman owned two residences on one piece of property. She occupied the newer solar-heated home and leased the electrically-heated home. She kept both Hydro accounts in her name and used the service address to distinguish her tenant's bill from her own.

Unknown to her, the meter identification numbers serving the two residences were inadvertently switched on B.C. Hydro's records. Consequently, the service addresses printed on each bill were also incorrect. The woman was paying the tenant's higher bills and the tenant was paying her low bills.

The woman first complained about her large bills to B.C. Hydro in November 1982. She was advised of consumption patterns by a B.C. Hydro representative but an investigation was not initiated. The error in the meter numbers was discovered the following month when Hydro installed a new meter on one of the homes. However, Hydro's records were not amended until March 1983 when the woman complained once again and a more thorough investigation was undertaken. She requested a refund for the difference between the bills because she did not feel that Hydro had properly acted upon her initial complaint. Hydro refused the refund, arguing the energy had been consumed. Who paid the bills was a matter between the woman and her tenant, Hydro contended.

The woman continued to argue her position with Hydro for the next two years but no resolution was ever reached. Finally, she complained to the Ombudsman's office.

Our investigation concluded that B.C. Hydro's attention to the woman's complaint was less than satisfactory. While the error in the meter numbers was discovered in December 1982, the customer was not informed of the error and the service addresses on Hydro's records were not corrected until three months later. Therefore, the complainant continued to pay her tenant's higher bill until further complaints finally brought the error to light.

At our request, B.C. Hydro re-examined the woman's complaint and the circumstances of the investigation. Although Hydro did not comment directly on their own investigation, they agreed to reimburse the customer $175 for the billing periods from November 1982 to March 1983. (CS86-152)

Who pays the bill?

A man lived in shared accommodation. The Hydro account was in his roommate's name. He vacated the residence a month before his roommate who later moved out leaving the Hydro bill unpaid.

The roommate moved back to his parents' house and did not require further Hydro service. Our complainant moved to another residence and opened a Hydro account in his own name. When Hydro could not locate the roommate, they checked with the former landlord and obtained the complainant's name. The debt was then transferred to his account and disconnection was threatened when he balked at paying.

We made the case to Hydro that this man could not be held responsible for his roommate's debt. Hydro contended that the customer had already made payment arrangements on the debt although no actual payment had been made. We suggested, however,

that this was not an admission of responsibility but rather the action of a person desperate to retain Hydro service.

Hydro agreed to delete the disputed charge from the complainant's account and the disconnection threat was cancelled. (CS 86-153)

Gas line had to be moved

A homeowner was told by B.C. Hydro that his existing natural gas line was unsafe and would have to be moved because it ran underneath his garage.

The homeowner asserted the garage had been constructed over top of the gas line in accordance with the terms of a municipal permit. He also contended other homes in his neighborhood had similar gas line installations and were not required to change. He thought he was being "singled out" by Hydro.

When this homeowner complained to the Ombudsman's office, our investigation concluded Hydro had acted in a proper fashion in accordance with all of the appropriate regulations. However, we also found that several municipal authorities routinely issued building permits without having B.C. Hydro check the plans. There is no requirement for a municipality to check with Hydro prior to issuing a building permit. As a result, a homeowner could build his garage contrary to the *Gas Safety Act* and Regulations, if he failed to have his plans checked by B.C. Hydro.

We pointed out this problem to the municipalities involved and were advised a crosscheck would be implemented by the municipal licencing offices as soon as possible.

We could not, however, substantiate the homeowner's complaint and he was advised he would have to comply with Hydro's requirements and have his gas line changed at his own expense. (CS86-154)

Did roommate exist?

A woman had an outstanding bill in her name from a former residence. She shared her current residence with a roommate who had the Hydro bill in his name. B.C. Hydro transferred the woman's arrears onto her roommate's account and disconnected the service when the outstanding bill was not paid.

Hydro's position was it was justified in cutting service even though the account was not in this woman's name because she was designated as the principal occupant on the rental agreement. Furthermore, the woman's roommate was not listed on the lease, which led B.C. Hydro to suspect that he was a fictitious tenant.

We argued that a tenancy agreement is not always relevant when ascertaining responsibility for a Hydro bill. The responsible party in a multi-tenant residence is the one who contracts for the Hydro service. The woman's roommate was quite prepared to attend the Hydro office and produce identification to prove that he did indeed exist.

B.C. Hydro later agreed that the woman's arrears could not be transferred onto her roommate's account and the service was reconnected without charge. We urged the complainant to negotiate a separate payment agreement with B.C. Hydro which she agreed she would do.(CS86-155)

Woman resists selling possessions

A woman encountered serious financial difficulty after her husband died and her children moved out of the family home.

She was forced to go on income assistance and was faced with disconnection for a substantial Hydro bill she could not pay. The Ministry of Human Resources would not agree to help her until she had first attempted to dispose of certain assets in her possession.

The woman's son was returning to his job within several weeks and would then be in a position to help support his mother. The complainant felt it was unfair that she should be forced to hurriedly sell her possessions, most likely at a substantial loss, when the problem would be dealt with in a matter of weeks.

When we contacted B.C. Hydro, we discovered that a substantial part of the woman's Hydro bill represented a natural gas conversion loan which had been taken out in her son's name. B.C. Hydro agreed to separate this amount and bill it directly to the woman's son.

The Ministry of Human Resources then readily agreed to give the complainant an emergency grant for the greatly reduced bill. (CS86-156)

Estranged spouse responsible

When the complainant and her husband separated, she moved out of their jointly-owned home to a separate residence. Her husband continued to live in the home and the B.C. Hydro account remained in his name.

After four months, the husband moved out leaving an outstanding bill. Our complainant was successful in renting out the property to tenants but then found out that B.C. Hydro would not connect the service until the arrears were paid. Our complainant be-

lieved it should be her husband's responsibility to pay the bill and we agreed.

In the end, B.C.Hydro resolved the problem on its own initiative. Once it had been verified that the woman had not been sharing the residence with her husband during the billing period in question, B.C. Hydro agreed to connect the service and pursue the husband for the outstanding bill.(CS86-157)

Permit requirement waived

A native Indian band in northern B.C. had established a new reserve several miles from the original one, and most of the band members had moved to the new reserve. Some band members living in the city and wishing to move into the old reserve, were running into problems with B.C. Hydro.

As each tenant vacated the old reserve, B.C. Hydro had removed the meter from the building, apparently under the impression that the old reserve was to be closed altogether. It is also Hydro's policy in that area to remove meters from vacated residences which will not be re-occupied immediately, due to a high rate of vandalism. Even when it became apparent that the old reserve would continue to be utilized, meters continued to be removed as residences were vacated.

The band complained that B.C. Hydro was requiring that an electrical inspection be performed on each residence, and an electrical permit obtained, before the meter would be re-installed and the power reconnected. This was considered unreasonable by the band members as the permits cost money and it often caused a considerable delay in reconnecting Hydro service.

After we contacted B.C. Hydro, they looked into the matter and discovered that a full electrical inspection of the entire reserve had been performed the previous summer. B.C. Hydro agreed to waive the electrical permit requirement except in those cases where the meter base had been damaged or when the residence had been vacant for more than 90 days, which is Hydro's standard practice. This resolution satisfied the band, since most homes were not vacant for more than 90 days. (CS86-158)

Time payment arranged

A woman was billed $988.81 because of a malfunctioning Hydro meter. She did not think Hydro had the authority to bill her for what she saw as a mistake by the company.

Our investigation found that the legislation under which Hydro operates permits the utility to estimate the customer's consumption of electricity or gas for billing purposes when that customer's meter fails to register or registers incorrectly. Since the complainant's meter was not registering correctly in 1985, the authority had the right to estimate her consumption based on the consumption history of the residence and bill her accordingly.

Regardless of Hydro's statutory right to do so, we believed that it was inappropriate for Hydro to demand immediate payment for the full amount of arrears which were caused by a faulty meter they had installed over a year previously. Our office obtained the assurance of the Chilliwack Hydro manager that, upon request, the complainant would be allowed time to repay the $988.81 arrears. In our opinion, a 12-month repayment period was reasonable.

The complainant was informed of our recommendation and indicated she would discuss the repayment details with the local Hydro manager and subsequently arranged payment over a 10-month period. (CS86-159)

Usage jump unexplained

A man operated a small business in Vancouver until March 1986. In reviewing his business records, he noticed that his Hydro charges for the billing period of November 1985 to January 1986 had been inexplicably higher than normal. He was unable to obtain a satisfactory explanation from Hydro for the 'blip' in his old account and contacted our office to request our assistance.

We asked Hydro staff to recheck the account to see if they could come up with an explanation for the increase in the complainant's electrical consumption. They conducted an extensive investigation and were unable to pinpoint the cause. They checked the meter and found it was functioning properly. Since there was no apparent reason for the consumption increase forthcoming from either Hydro or the complainant, Hydro agreed to negotiate a reduced amount with the complainant. Our complainant was satisfied to be able to save some money. But the cause of the added consumption remains a mystery which neither he nor Hydro were able to solve.(CS86-160)

Help in more ways than one

Sometimes, the Ombudsman's office can assist people in more ways than initially meet the eye.

One complainant was physically handicapped and unemployable. His wife was on UIC and did not receive an expected UIC benefit cheque because it had been sent to the wrong address. Since the UIC regulations stipulate the cheque could not be re-

placed for 10 days, the couple were unable to pay an outstanding Hydro debt and faced an imminent disconnection of their Hydro service.

When we looked at the issue, it became apparent that the complainant might qualify for Handicapped Persons Income Assistance with the Ministry of Human Resources, albeit at a reduced level since his wife was receiving UIC benefits. At the very least, they could approach the Ministry and request some type of hardship assistance to help them with their immediate problem at B.C. Hydro.

Acting on our advice, the couple went to MHR. After ascertaining that the couple qualified, the Ministry authorized a hardship grant to pay the Hydro arrears. Since they also met the eligibility criteria, the couple was given some additional funds to assist them until the wife managed to get the UIC cheque sent to the right place. As an added bonus, an appointment was made for the husband to be processed for HPIA. His chances looked promising.

Not only was the couple able to pay off their Hydro arrears, our office was able to give them advice which could have a major impact on their financial future.(CS86-161)

An elusive roommate

In the course of trying to collect outstanding accounts, B.C. Hydro attached the arrears from two former addresses of one customer onto the Hydro account of her current roommate.

The woman complained to the Ombudsman's office, claiming she was not responsible for the previous accounts and that, in any event, they could not transfer them to her roommate's account. The woman claimed her boyfriend had been responsible for one previous account and that she had never even lived at the other address.

We asked Hydro on what information they had based their decision to add the complainant's arrears onto her roommate's account, an action which would be justified only if the two had lived together at the two former addresses. Hydro's records showed that one past account had actually been listed in the complainant's name. Hydro contacted the landlords at the other two previous addresses and were told that they had rented to one person only — the complainant. The current landlord knew of no roommate. Hydro had also contacted the employer listed on the alleged roommate's application only to find that he too had never heard of the roommate.

We also contacted the woman's current landlady, as she had been quite adamant that she did indeed have a roommate. The landlady stated that she had never actually met the roommate but understood that the girl was under 19 years of age. Therefore, she could not be placed on the rental agreement because in B.C., contracts with minors are not enforceable. For the same reason, the roommate could not take responsibility for the Hydro account. We told the complainant that we could not substantiate her complaint. We also advised her to transfer the Hydro account into her own name from that of her roommate's to avoid any future problems. (CS86-162)

Billing error admitted

When the complainant called us, his Hydro service had already been disconnected for a month. B.C. Hydro had transferred an outstanding debt in his brother's name onto his account. The man freely admitted that his brother was living with him but stated that he had moved into his present address alone and his brother had followed several months later. He also did not deny that he had lived with his brother at the latter's former address, but said that he had stayed there for only three or four months and then moved into his current residence.

After we contacted B.C. Hydro, they checked both the time period applicable to the arrears amount and the date the complainant opened his current account. They discovered that he had not been living with his brother during the period his brother's debt had started to accumulate. Hydro readily admitted to their error and the service was reconnected immediately. The young man was satisfied that the problem had finally been resolved. (CS86-163)

Expo 86

Inquiries	0
Declined, withdrawn, discontinued	1
Resolved: corrected during investigation	0
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	3
Total number of cases closed	4
Number of cases open December 31, 1986	2

Job rejection disputed

A man was unsuccessful in a competition for a bilingual position at Expo. He felt he was well-qualified and complained that he had not been given adequate reasons for being turned down. The complainant said he had been told by Expo staff members and the chairman of the corporation that he was well-qualified technically but that other considerations had also been important.

An Expo personnel official explained to us that other qualifications besides language ability were taken into account. Other candidates had been considered more suitable overall.

Our office felt the competition had been fairly managed. We explained the outcome as Expo had done and suggested he let the matter rest. (CS86-164)

Insurance Corporation of B.C.

In 1986, we received approximately five per cent fewer complaints against the Insurance Corporation of B.C. than in 1985.

We have appreciated the continued high degree of cooperation and support from all levels within the corporation. In particular, ICBC's full-time Manager of Ombudsman Inquiries has been of great assistance in facilitating access to corporation files and speeding the resolution of complaints where appropriate.

Our working relationship and understanding of each other's role appears to have been further enhanced by our Claim Centre visiting program which will be continued in 1987.

Inquiries	38
Declined, withdrawn, discontinued	197
Resolved: corrected during investigation	138
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	32
Total number of cases closed	405
Number of cases open December 31, 1986	75

Theft claim suspected

A man reported the theft of his pickup truck to the police and to ICBC. The vehicle was found a week or so later, more than 100 miles away, where it appeared to have been abandoned in the bush. Some engine parts had been removed. The cost of repairs would have exceeded the value of this older truck, so ICBC considered it a total loss.

ICBC refused to pay the claim because there was no sign of the ignition having been tampered with, as an indication of theft. The corporation suspected the claim was not genuine.

When the truck owner complained to us, we suggested to ICBC that there are ways a vehicle can be stolen without leaving tell-tale signs. We asserted the corporation should show other evidence to support its suspicions.

At our request, the claim was reconsidered and the owner was paid for the loss. (CS86-165)

Misleading information alleged

The complainant had been responsible for an accident in which his car had been written off, the other vehicle damaged and both he and the other driver injured. As a result of the accident, he had been charged with impaired driving.

He felt he had been misled by the corporation on the effect of pleading guilty to the charge. He said he had been told that his own claim would not be paid but that ICBC would not pursue him for the cost of the other party's claim. He said he decided to plead guilty only to discover later that ICBC did plan to pursue him for the claim costs.

We noted that he had admitted drinking, that his blood alcohol reading had been quite high, and that two lawyers he consulted had both recommended a guilty plea. In other words, the likelihood of a conviction would have been high. Furthermore, we were unable to establish that he had been misinformed by an ICBC adjuster.

When a driver has been convicted of driving while impaired, ICBC is empowered to seek recovery of its costs from the convicted person and it may enforce this right by obtaining a court judgment. We could find no grounds upon which to recommend that ICBC forego its right in this case.

This complaint illustrates the need for the corporation to take great pains to explain to its clients the result of being found in breach. ICBC has agreed to incorporate instructions to that effect into its adjuster training courses. Adjusters would also inform clients of the power of the Superintendent of Motor Vehicles to seize vehicle registration plates and to refuse to renew or issue a new driver's licence to anyone who owes a recovery debt to ICBC. (CS86-166)

Cash settlement accepted

The owner of an older car claimed that ICBC refused to authorize sufficient repairs to restore his vehicle to a roadworthy condition.

The automobile's frame had been bent and ripped from the bottom of the car. ICBC would only pay for the straightening of the frame and other body work but would not pay for the $300 in additional welding which the body shop considered necessary for safe driving.

The car frame was quite rusted and ICBC was not willing to pay for improvements to the car which would increase its pre-accident value. The owner acknowledged that the welding job would improve the value of the car and offered to split this additional cost with ICBC. The Corporation refused.

As a result of our inquiries, ICBC obtained further information on the condition of the car from the body shop and confirmed that the car probably would have failed a motor vehicle safety inspection prior to the accident. The matter was finally resolved

when the complainant accepted ICBC's offer of a cash settlement as an alternative to paying the body shop for the repairs. (CS86-167)

Help in arranging payment

A man who owed more than $2,300 to ICBC for penalty point premiums called us for assistance in negotiating a payment arrangement with ICBC. Since our initial inquiries showed no indication that he had actually contacted his ICBC collector to discuss the matter, we referred him back to ICBC. We suggested that he could also contact the collections supervisor if he could not reach an agreement with his collector.

The following day, the man called us back to report that his collector was working the afternoon shift and was unavailable. However, he was most concerned that his request to speak with a day supervisor was denied by the switchboard operator on the grounds that he had to speak with the afternoon shift supervisor — presumably because his collector worked on that shift. It seemed to make no difference when the man explained that he also worked afternoon shift at his own job and could not call during that period.

We discussed the matter with the assistant manager of customer collections who contacted the complainant directly and negotiated a payment arrangement to the complainant's satisfaction. The manager also took steps to ensure that customers' requests to speak with supervisors were handled more appropriately. (CS86-168)

Delay in settlement

A man complained to our office that ICBC had unreasonably delayed the handling of his claim for the total loss by fire of his logging truck. After the fire, he said, ICBC delayed giving him the required proof of loss forms by several weeks. Regulations gave ICBC another 60 days beyond filing of the forms to pay his claim. It appeared that ICBC suspected the complainant of arson and was buying time for its investigation. Meanwhile, the complainant was losing valuable work during the height of the logging season and was falling behind in his mortgage payments.

At our request, an ICBC investigator agreed to take a statement from the complainant under oath at the North Vancouver ICBC offices instead of waiting until the investigator's visit to the complainant's community the following week. ICBC wanted to assess the complainant's credibility and check the consistency of certain reported facts. ICBC subsequently decided to settle the claim without further delay which allowed the complainant to purchase a replacement truck and return to work. (CS86-169)

Interest, expenses paid

A man complained that ICBC had unreasonably delayed the settlement of his claim for the total loss of his vehicle.

The accident occurred on July 5, 1985. On August 2, 1985, he received a cheque from ICBC for $9,400. However, before he cashed the cheque, ICBC stopped payment on it. Apparently, ICBC had failed to comply with a regulation requiring such cheques to be issued in the names of both the owner and any lien holder.

More than four months following ICBC's stop payment request, the man still had not received a new cheque and was unable to obtain an explanation for the delay. He then contacted the Ombudsman's office.

Our investigation did not reveal any reasonable basis for the delay in re-issuing the cheque. As a result of our intervention, the complainant finally received his re-issued cheque on February 12, 1986. However, over the 28-week delay from August 2 to February 12, he had incurred interest charges of $734 on his outstanding car loan. Furthermore, the complainant was unable to purchase another vehicle during this time and had to use a taxi occasionally which cost him a total of $73.50, bringing his total loss due to this delay to $807.50.

The complainant was most appreciative when our efforts resulted in ICBC's acknowledgement of his claim and payment of the interest and taxi expenses. (CS86-170)

Travel advance for claim

A young miner had been self-employed for some time as a placer contractor when injuries suffered in a rear end collision prevented him from continuing work. ICBC paid some wage loss benefits but it was reluctant to issue any further payments without substantial documented proof of the complainant's previous earnings. The complainant was frustrated by ICBC's refusal to accept his sworn statements and claimed that he did not have sufficient funds to retrieve his records from storage in another part of the province. ICBC also questioned the extent to which the complainant was disabled from working.

After discussing the complainant's predicament with a senior corporation official, he agreed that a $200 travel advance should be issued to facilitate retrieval of the necessary records. (CS86-171)

Repair contract with whom

A man's car was damaged extensively, through no fault of his own. To control the costs, ICBC decided to have the car repaired under contract by a shop proposed by the man and approved by the corporation.

The repairs were not completed to the standard specified in ICBC's agreement with the repair shop. An ICBC representative agreed that the repairs were incomplete and even wrote to the shop specifying the deficiencies. However, all of the problems were not corrected. While ICBC offered to assist the complainant in his dealings with the repair shop, the corporation denied responsibility for completing the repairs on the grounds that the 'contract' was between the complainant and the repair shop. Furthermore, ICBC had already paid the shop in full.

Unfortunately, in the course of the dispute, the repair shop went into bankruptcy, leaving the complainant with no place to turn apart from ICBC's advice that he take legal action against the repair shop.

In questioning ICBC's position, we proposed that a contract did exist between ICBC and the body shop in this case and suggested that, in any event, the nature of the contractual relationships among all three parties — the insured, the body shop and ICBC — ought to be clarified. Considering the circumstances, and pending a review of the legal issues, ICBC agreed to pay for completion of the complainant's repairs at another shop. (CS86-172)

Who owned destroyed barn

A Ministry of Transportation and Highways vehicle accidently destroyed a man's barn. Since ICBC is the Ministry's insurer, the complainant initiated a claim with the corporation for replacement of the barn.

ICBC hired an independent adjuster to appraise the damage but in the course of negotiations, the Ministry of Highways suggested that it had purchased the barn several years before from previous owners as part of a right-of-way acquisition agreement with a previous owner. A corner of the barn encroached on the right-of-way.

ICBC's independent adjuster investigated the matter and concluded that the complainant was not entitled to compensation since he did not own the barn. The man then complained to the Ombudsman's office.

In our investigation, we asked the Ministry of Transportation and Highways for proof of its assertion of ownership but did not get complete documentation. We then requested that an ICBC manager interview the previous owners in person to clarify the Ministry's right-of-way compensation agreement. As a result, the complainant's ownership of the barn was confirmed and his claim was paid along with interest to compensate for the year-long delay in settling the matter. Our investigation and the review by ICBC's manager revealed serious deficiencies in the handling of the complainant's claim by the independent adjuster. (CS86-173)

Labour Relations Board

In 1986, we received very few complaints against the Labour Relations Board. None were substantiated. It has been our experience that the Board acts in a fair and reasonable manner.

Inquiries	2
Declined, withdrawn, discontinued	6
Resolved: corrected during investigation	3
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	9
Total number of cases closed	20
Number of cases open December 31, 1986	8

Delays understandable

A number of the Labour Relations Board complaints received by our office in 1986 concerned the amount of time it took the board to process an application and reach a decision. Many of these issues involve questions of unfair union representation and applications for certifications. From the complainant's perspective, the process took too long. The same concern was expressed about appeals.

Investigations conducted by our office in 1986 found no apparent instances of undue delay by board officials. In our view, the time frame utilized by the LRB for processing applications and appeals was appropriate.

We believe part of the problem may be that some of the complainants do not appreciate the extent of the process leading up to a Board decision. We do, however, recognize the anxiety and frustration faced by a complainant waiting for a decision which, in all likelihood, will have a major impact on his or her life.

In our experience, sometimes a simple explanation of the complexities involved in the process by one of our staff will assist to allay some of the complainant's concerns.

We also recognize that, because of the large number of complaints handled by the Board, some delay is inevitable.(CS86-174)

Motor Carrier Commission

Our office receives few complaints against the Motor Carrier Commission. We are pleased to report the Commission's willingness to cooperate with our staff. For the most part, we resolve complaints on an informal basis.

Inquiries	0
Declined, withdrawn, discontinued	2
Resolved: corrected during investigation	2
Substantiated: rectified after recommendation	0
Substantiated: but not rectified	0
Not substantiated	0
Total number of cases closed	4
Number of cases open December 31, 1986	3

Reasons for rejection requested

In the 1985 annual report, we expressed our concerns regarding the practice of the Motor Carrier Commission of not giving reasons for the denial of a licence application. In our view, adequate and appropriate reasons should be included in any refusal as an essential ingredient of procedural fairness.

The Commission agreed that applicants should understand the reasons for the decision but it also had administrative concerns. A compromise was reached between our offices whereby a note would be included in decision letters to applicants stating that the reasons for their licence refusal are available upon request.

At least one 1986 commission decision letter did not include this advice. Our office was informed by a complainant's agent that when she attempted to obtain the reasons from both the Motor Carrier Commission branch offices in Burnaby and Cranbrook, she met with no success.

We wrote to the Chairman outlining our concerns. In response to our query, a letter was sent to the complainant's agent outlining the reasons the licence application had been refused. (CS86-175)

Workers' Compensation Board

In last year's annual report, we commented that our relationship with the Workers' Compensation Board was gradually improving and expressed the hope that it would continue to improve in 1986.

This improvement has occurred through the efforts of both WCB and Ombudsman staff. The improvement has been greatly enhanced by the Board's agreement to designate a liaison person between our offices. Based on our experience with the liaison concept with other Boards and Ministries, we felt that such a designated staff member would provide advantages for both our offices. These advantages include the resolution of complaints by the liaison, the quick determination if any errors have been made, the ability to identify patterns and sources of repeated complaints, the ability to identify inconsistencies in practices between area offices or departments and, over time, the development of an overall expertise in dealing with complaints we direct to him. The Board designated one of its Assistant Directors of Claims as the liaison person. In the few months since this system has been instituted, we have seen definite positive results.

Another way by which communications should be enhanced is the Board's recent agreement to add the Ombudsman to its list of parties who receive Board policy papers for comment before they are finalized. The entire process of review can only be assisted by opening up the lines of communication to outside agencies, including our own, regarding problem areas which are the subject of Board discussion.

During 1986, we examined better ways to process complaints we received in the WCB area. For example, the Board agreed to release claimants' files directly to our office for a limited, specified time. Previously, our staff travelled to the Board's offices and read through a file to identify the required documents. Board staff would then copy these documents and our staff would retrieve them at a later date. Both we and the Board have found the new system to be much more administratively efficient.

Progress was made in another area of concern and the subject of on-going communication with the WCB, that of 'assignments' of future benefits to the Ministry of Human Resources. As reported in last year's annual report, we had received several complaints on this subject. Many workers did not understand that their income assistance would be recovered when they signed such assignments. The result was that some people were paid by both agencies, some people were over-penalized in the recovery process, and everyone was frustrated by the individual problems and the all-around uncertainty. In May, we organized a meeting between senior WCB staff and the Ministry to discuss and try to resolve these problems. The participants agreed that double payments should not occur but that the system should be clear on what a double payment is — when both agencies pay money for the same time period. That was important, because some WCB awards occur years after the injury. In the meantime, the worker may be off income assistance and back to work, or even back on assistance for some other reason. It was also agreed that clients/workers should know what will happen in advance, and should know that any claim by MHR is appealable through the usual MHR appeal process. Both the Ministry and the Board appointed a liaison person to sort out the details. An agreement between the two agencies has now been finalized.

Another problem area where progress has been made is that of pejorative comments. Last year, we reported our concern regarding the presence of untrue, irrelevant and prejudicial comments on claimants' files. The Board had refused either to remove or annotate objectionable material. Their position was that the file constituted the legal record of the claim and could not be tampered with in any way. In an attempt to resolve this matter, we made a further proposal that, where a comment on a claim file has been found to be irrelevant and pejorative, the Board annotate the comment with a stamp referring the reader to the correcting document, for example, 'Ombudsman findings', 'worker's letter' or 'Board memo'. The Board agreed to our proposal. We are hopeful that the use of this stamp will resolve a number of outstanding complaints related to pejorative comments.

During 1986, we had ongoing communications with the Ministry of Labour regarding the unresolved cases which the former Ombudsman had reported to Cabinet and to the Legislature. At the request of the former Minister of Labour, Terry Segarty, a group of senior Ministry officials met to consider the Ombudsman's reports. As a result of this consideration, some longstanding complaints were rectified. For example, the Deputy Minister of Labour agreed to recommend to the Minister that the *Workers' Compensation Act* be amended to incorporate discretionary provisions for Medical Review Panel appeal time-limit extensions. The committee of senior officials also suggested that the Board pay a worker's legal expenses in a case where the adjudicator's improper actions had necessitated the hiring of a lawyer in the first place. (See CS86-200) Thirdly, the Ministry of La-

bour and the Board agreed to refer the matters in dispute in a worker's case to a Medical Review Panel. (See CS86-199) Fourthly, it was agreed that the committee and the Board would further consider the issue of disability caused by allergic sensitivity.

We very much appreciate the cooperation of the Ministry of Labour in setting up a mechanism whereby some of the outstanding issues have now been resolved. The former Ombudsman had reported a total of 25 WCB cases to the Legislative Assembly in Special Reports No. 8 (submitted in April 1984), and No.'s 12, 14 and 15 (submitted in June 1985). During this year, 17 of these were closed as not rectified, four were closed as rectified, two were closed as rectified in part, and two cases are being further considered by the Board. (See CS86-199,200)

Inquiries	54
Declined, withdrawn, discontinued	474
Resolved: corrected during investigation	127
Substantiated: rectified after recommendation	18
Substantiated: but not rectified	24
Not substantiated	77
Total number of cases closed	774
Number of cases open December 31, 1986	172

Unreasonable delay

A worker complained to us that there was an unreasonable delay on the part of the Workers' Compensation Board in deciding his pension entitlement. We investigated his complaint and found that from January 11, 1984 until early May 1984, there was no action taken by the disability awards officer to reach a decision regarding the worker's pension assessment.

According to Board policy, claimants whose disabilities have stabilized but who are unemployed and who are awaiting a pension decision should be given priority handling. The worker's situation fit these criteria and so we felt that the claim should have been treated as a priority. We concluded that there was unreasonable delay on the part of the Board's disability awards officer.

The commissioners concluded, after examining the worker's claim files, that there was procrastination on the part of the disability awards officer in determining the worker's pension. They therefore agreed to have an apology issued to the worker for the delay. They also referred the case to the Director of Claims to decide what action was to be taken with the disability awards officer. (CS86-176)

Loss of earnings assessment

A worker complained to us about a Workers' Compensation Board decision that he was capable of performing the job of a power saw mechanic. The decision affected the amount of the worker's pension. The worker did not think he could do the lifting this job would require.

The worker had appealed this issue to a board of review which found support for his position from his orthopaedic specialist. The doctor reported to the board that he did not believe the work of a power saw repair mechanic was suitable, considering the worker's back and leg problems. The board of review recommended the worker's pension be reassessed on the loss of earnings method. Under this method, the Board measures disability by awarding 75 per cent of the difference between the worker's average earnings prior to the injury and the average amount he is able to earn after the injury.

Instead of reassessing the worker's pension as recommended by the board of review, the rehabilitation consultant wrote to the orthopaedic specialist asking for his opinion once again. In writing to the specialist, the rehabilitation consultant included an incomplete quote from the board of review decision. He stated that the worker, as indicated in the board of review decision, agreed he could do the actual mechanical repairs. However, the rehabilitation consultant neglected to finish the remainder of the sentence from the board of review decision which read "but that, because of his condition, he would not be able to lift the power saws to start them in order to check them out."

This letter gave the impression the worker felt he could do the job and the orthopaedic specialist responded that, in view of that, he could see no reason why the worker could not be employed or rehabilitated along these lines. As a result, the rehabilitation consultant maintained that the worker was able to perform the duties of a power saw repairman.

This decision was appealed to the commissioners. They upheld the decision and further contended that the worker was capable of performing the jobs of a janitor custodian, a clean-up man and a tool crib attendant, all causing him no greater loss of earnings than what had been assessed.

During our investigation, we contacted the orthopaedic specialist once again. He explained that he believed the worker could do the actual power saw repairs but that he was not capable of lifting and starting motors which would require twisting of the back. The specialist also felt that the worker was not physically capable of performing the other three jobs that the Board believed he was able to perform.

We tentatively concluded, therefore, that the commissioners' decision was unjust. We also felt that

there was new evidence in the form of this specialist's opinion that the worker could not perform the alternative jobs of clean-up man, tool crib attendant and janitor custodian.

We proposed that the Board have another employability assessment done by a different rehabilitation consultant to determine the extent of the worker's loss of earnings.

The Board accepted our proposal in part. In its opinion, sufficient doubts were raised about the existing employability assessment that a new one should be done. It was obvious the orthopaedic specialist considered the worker to have a higher degree of impairment than the Board did. The Board felt the worker's physical limitations needed to be carefully delineated and the commissioners did not believe that the jobs of power saw repairman, clean-up man, tool crib attendant and janitor custodian should be excluded from the reassessment.

We also commented to the commissioners on the rehabilitation consultant's letter to the specialist. They concluded that, by its incomplete quotation, the letter lead the specialist to the wrong conclusions about the worker's testimony. The tone of the letter was also a matter of concern, in the commissioners' view. They, therefore, decided to refer this matter to the Director of Clinic and Rehabilitation Services for whatever action he considered appropriate.

The second rehabilitation report, recently completed, recommended that the complainant would be most suited to driving a taxi and was not suited to be a power saw mechanic. This meant the complainant was entitled to a greater 'loss of earnings' assessment and his pension was raised to $904.93 per month. In addition, he received a lump sum settlement, including interest to 1979, totalling $34,212.10. (CS86-177)

Implementing MRP certificate

In 1975, a young woman was in a freight elevator at her workplace when the elevator suddenly fell three floors to the ground. She was rendered unconscious by the fall and was taken to hospital.

Her physician later noted personality changes and headaches and sent her for tests, including a brain scan. Wage loss benefits were paid by the Workers' Compensation Board until 1977 when she temporarily returned to work.

In 1977, the WCB determined that her ongoing headaches were not related to her work injury and denied her claim for both back discomfort and headaches even though she said she could not continue work because of them. The worker appealed to a board of review, which recommended that the WCB examine further whether the headaches were related to the work injury. However, the Board decided that no further benefits were to be paid.

The woman complained to the Ombudsman in 1985. We recommended that the WCB seek an opinion from a neurologist or psychologist as to whether or not the woman's headaches and personality change were related to the accident. As a result, the commissioners referred the case to a Medical Review Panel, which decided in September 1985 that the woman had been totally disabled by the accident for the past 10 years.

Although the woman won the appeal to the Medical Review Panel, the Board was at first only prepared to pay her wage loss benefits for the period following the date of the Medical Review Panel decision and deferred a decision about the amount of her pension until she had received treatment. We suggested that she be immediately awarded a pension for the period between 1977 and the date of the panel decision. The commissioners agreed to do so and the worker received a cheque for more than $30,000 for that period. The woman subsequently received psychological treatment and full wage loss benefits. (CS86-178)

Sensitivity/communication

A letter to a grieving father

One of the more tragic cases in the past year was that of a father whose only son had died while firefighting. The father was denied WCB dependant's benefits.

Aside from the actual denial of benefits, the wording of a letter informing the father of this fact displayed some insensitivity. The letter stated in part: "It is also viewed that the same event that deprives a parent of a source of income also removes a source of expense as a result of the death of your son."

We brought this letter to the attention of the commissioners, who subsequently issued an apology to the bereaved parent, and instructed the claims adjudicator responsible to refrain from making such insensitive comments in the future. (CS86-179)

Adjudicator made assumption

Sometimes a point will arise because a claimant and his adjudicator are not fully communicating with each other. In the case of one injured worker who was supposed to be involved in physiotherapy, that failure to communicate had significant consequences. The adjudicator learned from the physio-

therapist that the claimant had not attended any sessions for a month. As a result, the adjudicator assumed that the claimant must have considered himself fit to return to work. The adjudicator then wrote to the claimant stating that wage loss benefits would be terminated in three days.

There was more to this episode than the adjudicator was aware. Besides, Board policy contained in Report Decision #63 required the adjudicator to determine whether the claimant had any further relevant information, arguments or comments before the drastic step of terminating the claim took place. This the adjudicator had not done.

Because the worker's basic claim could have been subject to further appeals which would incorporate the wage loss issue, we decided to make no recommendation concerning the cessation of wage loss which resulted from the adjudicator's decision. We did, however, propose to the Board that the requirement to allow a claimant an adequate opportunity to dispute adverse evidence should be reinforced at a staff training session. The Board replied that what we were seeking was part of a claims adjudicator's training and that reminders of these requirements were issued from time to time in regular training sessions. However, rather than provide such a general reminder at that time, the commissioners believed it would be sufficient if the individual claims adjudicator who handled this case were given a personal reminder of the Board's requirements. We decided that this action would satisfy our concerns in this matter. (CS86-180)

Interjurisdictional issues

Man deliberately run over

A bureaucratic web entangled a truck driver when he sought benefits for injuries.

In March 1985, the driver stepped out of his truck to record the licence plate of a commercial vehicle which had cut him off and nearly caused an accident. The driver of the other vehicle deliberately ran over him, causing serious back injuries.

The Workers' Compensation Board denied the claim on the grounds that the truck driver was not in the course of his employment when he was injured.

ICBC and Criminal Injury Compensation questioned the victim's story and delayed a decision regarding benefits pending the outcome of the criminal case against the driver of the other vehicle. In the meantime, the man turned to the Ministry of Human Resources for assistance for himself and his family but qualified only for emergency assistance because he operated a business, which he tried to keep afloat by paying another driver and borrowing from various sources.

In January 1986, the driver of the other vehicle pleaded guilty to a charge of aggravated assault. But before ICBC and Criminal Injury Compensation had determined benefits, the Collections Department of the WCB issued a writ and a sheriff advised that the man's truck was to be seized to pay off a debt to the WCB incurred a few years previously. The WCB later agreed to withdraw the writ in view of the special circumstances.

ICBC and Criminal Injury Compensation eventually paid interim benefits almost one year after the injury. However, we are dismayed that an interim agreement could not have been created by the agencies involved to pay benefits until the court decided the criminal case. An interim payment early in the case would have relieved the worker and his family of a great amount of added stress and financial worry. (CS86-181)

On making assignments

Two individuals complained that the compensation benefits they had been awarded were reduced by the Workers' Compensation Board to reimburse the Ministry of Human Resources. The deductions were so large that one complainant did not receive a Workers' Compensation Board cheque at all and the other received only a small portion of his settlement.

During the long period in which these complainants were appealing for further benefits from the Board, they had to rely periodically on income assistance. Sometimes, they would sign an 'assignment' form at the MHR office before obtaining funds. An assignment form is a document in which the income assistance applicant, in order to receive assistance, agrees to allow the Ministry to be refunded from any future Workers' Compensation benefits. Usually, the assignment specifies the amount of money involved and the period of time which the money is meant to cover. MHR will pay the applicant after he has signed an assignment and send a copy of the assignment to the Board.

MHR had a policy that if money to WCB claimants was to be paid on a hardship basis, i.e. the applicant was not eligible to receive regular income assistance, an assignment had to be signed. The funds provided would then become recoverable. If an applicant was eligible to become a regular income assistance recipient, then that person was not required to sign an assignment nor to refund MHR.

WCB practice was that if an assignment was in a claimant's file, MHR would be contacted to ascertain how much it had paid to the claimant since the WCB claim had been filed. The Board would then deduct

that amount from the benefits it had awarded to the claimant and reimburse MHR the amount deducted. Problems resulted from MHR inconsistently and inappropriately applying its policy, from delay in decisions on WCB appeals and from the Board misunderstanding its responsibilities in these cases.

The complainants' situation was an example in point. They signed assignments on occasion. Sometimes the complainants had so little money that they were eligible for regular income assistance rather than hardship benefits. But often, no distinction was made by Ministry workers. Many of the time periods which the WCB benefits eventually covered were different from the time periods for which MHR had paid benefits. However, when the complainants were awarded benefits, WCB staff asked MHR how much it had paid them and that was the amount the WCB repaid. The Board did not require copies of the signed assignments for each time period, nor did the Board concern itself with whether the periods of MHR coverage coincided with the period of WCB benefits coverage. One complainant had deductions for monies he had received from MHR for a period preceeding his WCB claim.

The circumstances described in the two complaints we received led us to investigate the legislation, policies and practices of both MHR and the WCB. In our view, the WCB did not have a legal obligation to repay any or all monies paid to its claimants by MHR. We thought that the WCB ought to repay only those monies covered by signed assignments and only those assignments covering time periods which coincided with the time periods covered by WCB benefits. With respect to MHR, it appeared that many of its field staff were uncertain as to whether or not and when MHR should take an assignment of a WCB claim. There was inconsistency in the amount requested to be repaid. It appeared that the entire process was fraught with uncertainty regarding the determinations of what money the Board was obligated to repay and what MHR was entitled to receive. The concern of both agencies should have been only that individuals not be paid twice for the same time period.

We organized a meeting between senior staff of MHR and the Board and encouraged further discussions between the authorities themselves to create a clear, coordinated and fair policy. Both authorities gave serious attention to this issue and were very cooperative. The discussions proved successful. Both authorities have agreed to new compatible policies. The WCB will only deduct those MHR monies from claimants' benefits which are covered by a signed assignment for a time period corresponding to the WCB benefit period. In the case of commuted pensions, the Board will only reimburse MHR for the monthly value of the pension for appropriate periods. MHR will only demand reimbursement for monies advanced on a hardship basis. The Ministry has agreed to revise its assignment form so that it contains more pertinent information for the income assistance applicant. We are pleased that the WCB and the Ministry are creating and implementing new policies which will ensure fair treatment for their mutual claimants.

The outcome of the Board and Ministry discussions was beneficial for the two complainants. The Ministry reviewed their files and found that most of the funds it had advanced had been on a regular income assistance basis. This meant that such monies were not recoverable from the claimants. The complainants received the money from MHR which had been deducted from their WCB benefits and paid to MHR. Several thousand dollars were returned to each of the claimants. (CS86-182)

Inadequate pension

Accuracy of comments disputed

We received a complaint from a worker whose left knee had been seriously injured in a 1979 work accident. The man complained that the pension which he was receiving for his leg injury was inadequate and that there were inaccurate comments on his file concerning the outcome of a job interview following his accident.

On investigation, we discovered that the claims adjudicator had not adequately considered a medical report on the man's condition prepared by a Board medical advisor. The advisor attributed osteoarthritic changes in the man's knee to the 1979 accident but the adjudicator decided not to accept the degenerative changes as part of his claim.

We proposed that clarification of the doctor's opinion be obtained and, if his conclusion supported a relationship between the injury and the arthritic condition, that the man be reassessed for further disability arising from his injury.

With respect to the inaccurate comments on the man's claim file, we discovered that a rehabilitation consultant had repeatedly placed comments on the worker's claim file indicating that the man had refused to take advantage of a janitorial position which was offered to him. In fact, there was no evidence that the man was at any time offered a janitorial position. Although he had applied for the job, he was not offered the job. All other evidence supported a conclusion that the man wanted a regular job and made all reasonable attempts to obtain one.

Although we concluded that the inaccurate information placed on the man's file had probably not affected his claim, we nevertheless proposed that

the comments be brought to the attention of a senior claims manager.

The commissioners reviewed our proposals and decided to implement both of them. The man's pension was therefore referred to a disability awards officer for review, and the inaccurate comments on his claim file were referred to a senior manager for review and possible action. (CS86-183)

Transportation costs

A worker injured his neck while working in British Columbia on a travel card issued by his union.

Under the travel card system, individual local units of a union can send unemployed members to other locals if jobs are available in the other location.

Soon after the injury, the worker returned to his home and family in New Brunswick to recuperate. The Workers' Compensation Board paid the worker benefits for approximately two months and refused further compensation. The worker appealed this decision to a Medical Review Panel.

It was necessary for the worker to return to British Columbia to attend the examination by the Medical Review Panel. But before his examination was scheduled, the Board changed its policy on payment of transportation expenses. Under the new policy, the Board would pay only transportation costs from Richmond to the Alberta border, except where the worker had left the province for reasons related to the compensation itself, for example, to obtain medical treatment unavailable within the province.

In our view, the Board's new policy did not take into account individual circumstances and was inconsistent with its own rationale for a transportation expense policy since the best place for this worker to recover was with his family and community support. Moreover, our research indicated that other provinces which had similar systems paid the full transportation expenses in such cases as this.

The Board agreed the policy required more flexibility and revised it to allow claimants to apply for reimbursement of expenses for the entire journey to an examination by the Medical Review Panel. Application would be made after the panel's decision is known. In deciding on the application, the Board will consider any special circumstances as well as the contents of the decision of the Medical Review Panel.

In the circumstances of our complainant, the Board considered that there were certain features, such as his normal work pattern, that weighed in favor of accepting his transportation expenses. The Board therefore decided to pay his entire travel expenses from New Brunswick to British Columbia to attend the examination by the Medical Review Panel. (CS86-185)

Termination of wage loss

Medical reports not filed

A worker employed as a faller for a logging firm injured himself when a power saw he was using kicked back into his left shin, cutting a nick out of the bone.

The worker lived in a remote area, 85 kilometres from the nearest medical office, and found it difficult to drive into town to have his doctor file regular medical progress reports with the Workers' Compensation Board. When no reports were forthcoming, the Board decided to terminate the worker's wage loss benefits, timing the cutoff on the basis of its medical advisors' "average expectations" for the type of injury, without seeing the worker or hearing further from his doctor.

Shortly after the Board made its decision and before notice of the decision had reached the worker, the Board received a report from the worker's doctor stating that he had recently examined the worker and that he would be fit to return to work within a few days. The Board did not change its decision upon receipt of the report, preferring to accept the view of its own medical advisors and pointing to a lack of objective findings in the doctor's report.

The worker complained to our office that he should have received a further five weeks wage loss in accordance with his own doctor's opinion concerning the date on which he was fit to return to work.

We contacted the worker's doctor and asked if he could provide a more descriptive statement of his medical findings. We also contacted the worker's employer for his opinion. While he was not medically qualified, he had seen the worker on a regular basis during the weeks when the worker had not visited his doctor. He was familiar with the worker, the nature of his job and the rugged conditions under which that job had to be performed. He informed us that he visited the worker regularly because he was concerned about his injury and because the worker was an important part of his crew. The employer's opinion was that the worker could not have returned to work at an earlier date than that given by the worker's doctor.

We asked the Board to reconsider the claim in light of this evidence. The Board agreed, with the result that the worker received a wage loss payment for a further six weeks.

The Board communicated its decision to us a few days before the end of November 1986. We were

aware that the small tract of rural land which the worker owned and lived on was due to be forfeited for arrears of taxes on November 30, 1986 and that the governing legislation gave the Surveyor of Taxes no authority to extend the deadline.

When we made the Board aware of the worker's problems with the tax authorities and the urgency of the situation, the Board made a superlative effort, expediting the wage loss calculation and issuing and delivering the cheque in time for the worker to pay his tax bill before the deadline. (CS86-186)

Dispute over return to work

A worker employed as a meat cutter working with a vibrating knife known as a 'wizard knife' began to experience numbness in his left hand as a result of working continuously with the knife. He laid off work in mid-January 1983 when the numbness became disabling.

The worker's family doctor diagnosed him as suffering from Raynaud's phenomenon, associated with occupational vibration, and referred him to a specialist for a second opinion. Prior to the worker being examined by the specialist, the family doctor expressed the opinion to the Board that the worker could return to work on February 4, 1983, provided that he did not return to using a wizard knife. He did not return to work then, however, because there was no other work available for him.

When the worker consulted the specialist on February 17, he was diagnosed as having a left hand carpal tunnel syndrome and was told not to go back to work until certain medical tests were completed. The tests were completed on March 8 and the diagnosis was confirmed. By that date, the condition was much improved and the specialist told the worker to report back to work on March 9.

The worker returned to work that day but was later made aware that the Board had decided not to pay him wage loss benefits subsequent to February 4, since his family doctor had stated that he could return to work at that time if he did not use the wizard knife.

The worker appealed to a board of review. This board felt that when the specialist had reported that the worker was disabled until March 9, he must have been referring to the worker's job on the wizard knife. It held that, since the claims adjudicator had found that alternative work was available, the worker could have returned to work on February 4 as reported by his family doctor. The commissioners agreed with this board of review evaluation.

The worker complained to our office in June 1985. We wrote to the specialist for clarification. He reported back that it was his opinion that the worker was "disabled from working with his hand at any kind of duty between February 4 and March 8." The claims adjudicator had described the alternate work which would have been available as a "labourer's job involving lifting, pushing, pulling, packing, etc, on the lines. . ." It appeared to us that the worker could not perform that work without using his hand.

We wrote to the Board suggesting that, in all of the circumstances, the worker had acted reasonably in adhering to the advice of the specialist in not returning to work until March 9. We proposed that the worker's case be reconsidered. The Board accepted our proposal and agreed to pay temporary total wage loss benefits from February 4 until March 8. (CS86-187)

Criminal Injury/discretion

A church-run social service agency contacted our office on behalf of a middle-aged woman with a complaint regarding the Criminal Injury Compensation section of the Worker's Compensation Board.

The woman was an income assistance recipient, classified as 'unemployable' by the Ministry of Human Resources. As such, she received extended medical coverage, as well as a higher rate of income assistance than 'employable' income assistance recipients. These 'unemployable' benefits are available only after four months of benefits at the lower 'employable' rate.

When this woman was awarded $4,000 in compensation by Criminal Injury Compensation section of the WCB, it decided to pay her award in three instalments, rather than one lump sum. Half of her award would be paid in the first month, a quarter in each of the next two months. Each instalment would make her ineligible for income assistance because she would have too much income. Further, she would have to requalify for the higher 'unemployable' rates by receiving the lower rates for four months. Thus, the split payment would result in at least a seven-month disruption of income assistance benefits. Since the Criminal Injury award was to compensate the woman as a victim of violent multiple sexual assault, its purpose seemed defeated by the split of payment and the income assistance regulations. One lump-sum payment would result in the loss of only one month of income assistance and she would not have to requalify for the higher rates.

The problem was resolved when the Criminal Injury Compensation Section agreed to our recommendation that it provide payment in one lump sum. Thus, the woman was able to receive the award with minimal further disruption of her life.(CS86-188)

Pension cancelled

A worker had been experiencing back problems for about five years when he suffered an injury to his back in 1967 which resulted in surgery. In March 1968, a Medical Review Panel concluded that the man's 1967 accident had increased his pre-existing back disability and that he should receive a pension for one year, after which the case would be reviewed. The panel also attributed continuing back symptoms to a prolapsed disc caused by his 1967 work injury.

In 1968, the commissioners decided to cancel the worker's pension at the expiry of the 12-month period, in March 1969. This decision was apparently based on two considerations. These considerations were first, that the Medical Review Panel had not been aware of an injury suffered by the worker in California and may have reached a different conclusion if it had been aware of this incident and second, that the worker's continuing problems were not related to his operation.

The worker complained to the Ombudsman's office in July 1985. In reviewing the worker's file, we found that in 1969, an orthopaedic specialist stated that he could not attribute the worker's chronic disability to the California incident. With respect to the second consideration, the commissioners' conclusion was contrary to the conclusion of the Medical Review Panel. No further medical assessment was done prior to the termination of the worker's pension. We therefore questioned the commissioners' decision to terminate the worker's compensation benefits.

Although the commissioners did not agree with the basis for our argument, they did not believe that the previous decision to terminate the worker's benefits was necessarily correct. They were of the opinion that the previous commissioners should have either referred the information on the California injury back to the Medical Review Panel members for a decision on whether their views of the worker's physical condition would have changed, or proceeded with the review at the end of the 12-month period.

The commissioners therefore requested that the California authorities be contacted for further information about the California injury. This produced no new information. Therefore, the Board's orthopaedic consultant and a disability awards medical advisor examined the worker. After reviewing these reports, the commissioners concluded that the worker has a permanent partial disability in the lumbosacral level of his spine and that this disability is related to his 1967 work injury and associated surgery. Moreover, they felt that this disability had been continuous since the worker's term pension ended in 1969. In the circumstances, the commissioners decided to have the Disability Awards Department pay the worker pension benefits for the period from 1969 to 1986. His pension will be reassessed in 1987 with future payments based on that reassessment. (CS86-189)

Discrimination

A Sikh man complained to us that the Workers' Compensation Board had refused him entry to the Richmond Rehabilitation Clinic unless he first removed his kirpan, a ceremonial sword worn by all baptized Sikhs. The Board had suspended his wage loss payments because, in their view, he had refused to undergo necessary medical treatment. The man also complained that his physiotherapy treatments outside the Board clinic were not being covered.

The man had lost four fingers from his left hand in a work accident. He originally received physiotherapy treatments outside the Board's facility, but was eventually instructed by his claims adjudicator to report to the Rehabilitation Clinic for the continuation of his treatments. When the man refused to remove his kirpan, the adjudicator advised him that his wage loss payments would be suspended until he removed it and began treatments at the clinic.

We advised the man of his right to appeal the adjudicator's decision to the review board. Subsequently, the Board withdrew its original reason for suspending his wage loss and stated instead that his benefits had been suspended on the grounds that he had not cooperated adequately with his previous physiotherapist.

On the question of entry to the clinic, we proposed that the worker be permitted entry if he first taped the kirpan to his body and sewed up its sheath to render it less accessible to him or anyone else. The Board replied that these measures were inadequate and that its policy was that no weapons were allowed in the treatment centre.

In the course of our investigation, we discovered a 1981 decision of a Board of Inquiry under the Ontario Human Rights Code which dealt with exactly the same situation. The Board of Inquiry in that case ruled that the worker was a victim of discrimination. Although we provided the commissioners with a copy of this case, the Board was not moved and we referred the worker to the B.C. Council of Human Rights.

With respect to coverage of outside physiotherapy, the Board finally agreed to pay for continuing physiotherapy treatments outside its own facility and to restore wage loss payments subject to the worker's cooperation with and attendance at the outside treatment program designed for him. (CS86-190)

In the course of employment

A key punch operator complained to us that the Board had denied her claim for compensation. She had been on her way to lunch when she entered the cloakroom at her place of employment. As she entered the cloakroom, another employee demonstrating a martial arts technique to a third employee, grabbed the complainant from behind and flipped her backwards. She was taken by surprise and suffered injuries to her lower back and left arm. She was off work for 26 days and required physiotherapy, medication and a neck collar. She had to use up part of her banked sick time.

The claims adjudicator denied the worker's claim for compensation because the injury was caused by a hazard introduced as a personal matter into the work situation — a hazard not considered to have arisen out of and in the course of her employment. The woman applied to the board of review, which determined that she was an unwitting victim of horseplay and that her claim for lower back injuries should be accepted by the WCB. However, the commissioners declined to implement the recommendation, contending the incident had no connection with her employment other than being on the employer's premises.

We found that the decision to deny the worker's claim was based upon a wrong choice of principle and was inconsistent with other decisions made by the Board. Section 5 (1) of the *Workers' Compensation Act* requires that an injury, to be compensable, must 'arise out of and in the course of' the worker's employment. The commissioners did not dispute that her injuries arose 'in the course of' her employment. The dispute was whether they arose 'out of' the employment. Therefore, the issue was whether there was a sufficient degree of connection between the injury and the employment.

We found the Board's denial in this case to be inconsistent with other decisions to compensate injuries that had even less connection with the workplace. For example, the Board had compensated a worker who was negligently struck by a vehicle driven by a non-worker while crossing the street to cash his paycheque at a bank that was some distance from the employer's premises. The worker was on duty as a driver. In another case, a worker was injured at work by a co-worker who placed a high pressure air hose in the vicinity of his anus and 'blew him up'. The Board compensated the victim and sued the other employee for damages.

Since the Board appeared to have no stated principle to guide it in deciding whether an injury arises 'out of' employment, we suggested the governing principle should be that an injury arises out of employment if the type of conduct or event which caused the injury could reasonably be expected to occur in the employment environment.

The complainant was injured not merely while she was at work, but because she was at work. If she had not been performing her work duties at her place of employment, she would not have been assaulted by her fellow worker and injured. Her association with her co-worker was a condition of her employment environment. She was not the instigator of the incident, but rather an innocent victim. We recommended that the Board recognize that her injury arose out of and in the course of her employment and allow her claim.

The commissioners did not agree with our recommendations. They denied that there was any inconsistency with the Board's other decisions, contending that this case was unique. They also declined to accept the principle we put forward to decide such issues, suggesting it would cover virtually everything that occurs at the workplace.

The commissioners suggested no alternative guiding principle, however, and in the absence of such a rule, it seemed to us that the commissioners had reached an intuitive judgment in this case. We also believed the principle we suggested did not cover everything that happens in the workplace; for example, private feuds between workers which lead directly to workplace assault would not be covered. The commissioners could not satisfy us that this case was unique from other cases they had chosen to compensate.

Subsequently, the Acting Ombudsman submitted a report to the Lieutenant Governor in Council respecting this case. After reviewing this report, the commissioners concluded that the worker's case did not fall within any of the Board's existing policies. They concluded that a thorough policy review should be instituted to determine what principles should be applied in determining whether injuries sustained while engaged in non-productive work activities on the employer's premises arise 'out of and in the course of employment'.

In the meantime, the commissioners agreed to allow the worker's claim and to direct that she be paid compensation benefits. They emphasized that this step was a reflection of the special circumstances of the case and should not be considered a precedent for other cases which may, on the surface, seem to be similar. (CS86-191)

First Aid certificate

A man employed as a firefighter and part-time ambulance driver complained that the Occupational

Safety and Health Division of the Board unfairly denied him an industrial first aid instructor's certificate.

The man had more than two years experience as an industrial first aid attendant, and had held an 'A' certificate for more than six months. Therefore, he met the initial qualifying criteria and was invited to take a pre-test. He was successful on his pre-test and was invited to take the two-week WCB course.

On the ninth day of the course, the two course instructors concluded that the man's level of performance was below acceptable standards and required he withdraw from the course. He subsequently complained to the Ombudsman's office.

Our investigation revealed that the instructors had proper grounds for their decision. Those who train others in such important skills must adhere to rigorous standards. However, the investigation also revealed that the method of assessing the performance of students in the course left something to be desired.

Those taking the course were expected to become self-assessors, since that was the sort of assessment upon which they would have to rely once in the field. We accepted that as a legitimate goal. But it was evident that all was not well with this self-assessment method, since the complainant was taken by surprise when asked to leave the course and the instructors said they were surprised by his surprise.

When we brought this concern to the attention of the WCB, they conceded that it should not be assumed that all students are properly assessing themselves. They agreed that changes would be made in the evaluation system to ensure that, in future, any student in the complainant's circumstances would be informed of any serious deficiencies and the possible consequences as soon as the instructors become aware of such deficiencies. (CS86-192)

Causation

No prior symptoms

Between 1969 and 1979, a worker experienced four problems in his lower back which incapacitated him for varying periods of time. The board regarded these incidents as aggravations of a condition that existed before these four injuries and consistently refused to accept responsibility for corrective lower back surgery requested by the worker. The worker finally had surgery in 1980 at his own expense. He complained long after this surgery to the Ombudsman's office about the Board's refusal of his claim.

Our investigation indicated the worker should have been entitled to a period of wage loss additional to the wage loss received following the first aggravation. Shortly after he returned to work following the first injury in 1969, he experienced a further period of disabling pain. The Board's position, however, was that this period of disability was not the result of work but was solely the result of the worker's pre-existing condition.

Our conclusion was based on the fac that because there had been no symptoms of a pre-existing condition prior to the worker's injuries, the Board had some responsibility to compensate the worker with respect to the event surrounding his surgery. The Board, however, continued to maintain that the surgery was simply the natural consequence of the pre-existing condition.

We further contended that, because the worker's condition had deteriorated following the work-related aggravations of his pre-existing condition, he should be considered eligible for a pension at least on a proportionate entitlement basis. While he would not be entitled to a full pension because of the pre-existing condition, he should be entitled to some pension because of the enduring effects of the aggravations. Again, because the Board did not accept that his continuing difficulties related to his work situation, they were not prepared to consider this recommendation. (CS86-194)

New medical evidence

A man complained to the Ombudsman in 1983 that the Workers' Compensation Board had refused to recognize his back disability was the result of a compensable injury in 1963. In 1986, we obtained new medical evidence from a rheumatologist. His opinion was that the man's 1963 injury could have been of sufficient force to have been a major contributing factor in the acceleration of the degenerative disease in his lumbar spine. The Ombudsman concluded that, in view of this medical opinion, the possibilities were evenly balanced and therefore, the benefit of the doubt should go to the worker.

The Ombudsman recommended to the commissioners that they accept responsibility, or responsibility in part, for the worker's condition. However, the commissioners declined, preferring the opinion of their own medical consultant and did not agree that the possibilities were evenly balanced.

However, since the commissioners had considered the medical merits of this man's claim, the resulting decision was actually a medical decision. As a new decision on the merits of the claim, it was appealable to the Medical Review Panel. The previous medical decision was no longer appealable because the 90-day time limit for appeals had expired. The man was able to obtain a medical certificate from his specialist, certifying that there was a bona fide medical dis-

pute over the connection between his continuing back disability and the 1963 compensable injury. The Workers' Compensation Board accepted the medical certificate as defining a bona fide medical dispute and referred the man to a Medical Review Panel for examination. (CS86-195)

Difficulty in diagnosis

A worker complained that the Board refused to compensate him for his hernia condition and subsequent operations. He had been injured at work when he was forced to bear the entire weight of a 179-pound tire which had slipped.

His doctor originally diagnosed his condition as a lower sacroiliac back sprain. The Board accepted the worker's claim and paid him wage loss benefits for approximately 10 days. He then returned to work, but continued to experience abdominal pain. Eight months later he underwent surgery, at which time a direct and an indirect inguinal hernia located in the left side of his body were discovered. After the operation, his pain persisted and six months later, a further operation was performed. At that time, a femoral hernia was discovered. The Board decided that his hernia condition was not compensable because the worker's doctor had made no reference to abdominal pain or to any other hernia-like symptoms in his initial report to the Board.

In our investigation of the case, the worker's doctor explained to us that the pain caused by the worker's back strain probably masked some of the pain caused by the hernia. Further, the worker's anatomical structure was somewhat unusual and because of it, normal hernia symptoms did not appear. This also accounted for the doctor's difficulties in diagnosing the worker's condition. His doctor also stated to the Board on February 24, 1978 that following his work accident, the worker experienced continual discomfort in the lower left part of his abdomen which persisted until his second operation. He was absent from work for many days between his injury and the first operation due to extreme pain in his abdomen. However, numerous examinations could provide no physical findings of hernia to account for the pain. Thus, since his doctor could not find a cause for his complaints of abdominal discomfort, the problem was not mentioned in the doctor's report August 14, 1978 to the Board.

We concluded that the difficulty in making the original diagnosis of his condition should not be cause for denying his claim. We felt that there was a clear continuity of hernia symptoms from the time of his accident. We found that the Board's decision not to compensate him for his hernia condition was based on the mistaken beliefs that the injury was not sufficient to produce a hernia, that there were no definable hernia type symptoms after the incident and that the complainant was having pain in his abdomen well prior to any claim.

We also pointed out to the Board that the doctor's report which supported the decision of the Board contained some crucial information which was inaccurate, that the worker's doctor had stated that the worker had been having pain in his abdomen prior to his claim. We also presented testimony from witnesses that the worker had complained of pain in his side shortly after the accident. We recommended that his hernia condition be considered work-related and compensable. In response, the commissioners had the worker's claim reviewed by their Director of Medical Services, who repeated the opinion of the first Board doctor.

We did not find the director's report to be persuasive as he failed to consider the worker's doctor's explanation why the abdominal discomfort was not initially mentioned in reports to the Board. The commissioners did not accept our recommendations on the grounds that no reports of abdominal complaints were received at the time of and in the period following the injury; that two Board doctors had given opinions that the worker's complaints did not result from the injury and that the witness statements made no difference because they were given many years after the date and were not specific as to dates.

In our view, all of the commissioners' objections had been answered: the failure to report was the doctor's responsibility; the Board doctor's opinions were based on incomplete and inaccurate information; the witness statements were as specific as to dates as can be expected after eight years.

After the Board's refusal to implement our recommendation, the former Ombudsman submitted a report of the matter to the Lieutenant Governor in Council. However, the commissioners reviewed the information and concluded that it did not present significant new evidence. We did not feel that there was anything to be gained by reporting the case further and so closed the file as substantiated but not rectified. (CS86-197)

Origin of pain in dispute

A worker complained about the refusal of the Board to accept responsibility for his ongoing right wrist problems. His problems began when he suffered a non-work related fracture of his right wrist in 1947. He returned to work after eight weeks and according to his doctor at that time had no further complaints of pain. The fracture was considered to have healed.

On March 2, 1949, the worker again injured his right wrist when a plank he was loading slipped and his right hand was bent backward by its weight. On August 23, 1949 the complainant underwent surgery on his right wrist. The Board allowed the claim for this operation and paid the worker a small pension for 56 months.

The worker experienced further episodes of pain in his wrist over the years as it gradually became more disabled. The Board, however, would accept no further responsibility, contending that any further difficulty was the result of the original non-compensable accident.

We maintained that at least some of the episodes of pain could be viewed as further aggravations of the 1949 incident and therefore the worker should have received wage loss to cover those periods.

When a specialist put forward the opinion that the complainant's present day difficulties stemmed from his 1949 operation, the possibility was raised that the worker should be considered for a further pension. Following the Ombudsman's intervention, the Board finally agreed to refer the entire issue to a Medical Review Panel to determine what responsibility the Board had for this claim. (CS 86-198)

Special Reports

The former Ombudsman had made three special reports to the Legislature and three reports to the Lieutenant Governor in Council. The three reports to the Legislature contained details of a number of cases in which the Workers' Compensation Board and the Ombudsman were not able to agree. At the Minister of Labour's request, a group of senior officials met to consider the Ombudsman's reports and, where possible, to offer suggestions for resolving the outstanding issues raised. Some of these outstanding cases have been rectified as a result. For example:

A man had complained that the Board had not awarded him a pension for his disability resulting from a spinal fusion.

Our investigation revealed that he had had eight compensable injuries involving his low back, all of which had been accepted by the Board. On the day of his first work injury in 1962, an X-ray showed some minor degeneration of his spine, then described by a Board doctor as "nothing very remarkable about this in a man 39 years of age." He had not had any previous back problems or treatment.

By 1966, the man's specialist reported to the Board that he was increasingly incapacitated as a result of a change in the structural anatomy of his discs which dated back to the 1962 injury. The specialist said the man would ultimately require the removal of his lumbosacral disc and a spinal fusion. By this time, he had suffered five work injuries to his lower back. He underwent a spinal fusion in 1967.

The Board denied responsibility for the spinal fusion claiming that it did not result from his 1962 and subsequent injuries. We initially concluded that the Board's refusal to accept responsibility for the fusion was unjust because it failed to consider a relevant factor — whether the 1962 accident or subsequent accidents had permanently aggravated a pre-existing degenerative condition. The Ombudsman recommended that the Board consider this and also recommended the man be assessed for disability award.

The commissioners had the file reviewed by the Board's orthopedic consultant and concluded there were insufficient grounds to reconsider. We then contacted the orthopedic surgeon who had treated the complainant in the 1960s and 70s, the orthopedic surgeon who performed the fusion in 1967 and the family physician. From their opinions, we concluded that the preponderance of the medical evidence supported the conclusion that the work accidents permanently aggravated a pre-existing degenerative condition and contributed to the necessity of a spinal fusion. The former Ombudsman recommended that the Board assess the man for a disability award to compensate him for any disability resulting from the spinal fusion of 1967, reimburse him for his medical expenses associated with the spinal fusion and pay any wage loss benefits due to him as a result of the fusion.

The Board refused, deferring to the opinion of the Board's orthopedic consultant.

Finally, as a result of the Ombudsman's report to the Legislature, the Board agreed that there should be a Medical Review Panel referral. They felt that such a referral would provide an appropriate and final resolution of the dispute over whether compensable back injuries in 1962 and afterwards permanently aggravated the pre-existing degenerative disc disease in his spine. We considered this step to rectify the complaint in part. At the time of this report, the case was still to be decided. (CS86-199)

Another case was rectified by the consideration of this committee of senior officials.

A man's wage loss payments had been suspended because his adjudicator wanted him to find and provide the Board with medical proof that his ongoing disability was still related to his work injury. About a month after the wage loss was suspended, his adjudicator told the complainant he was going to be charged with fraud because he had been seen working in the bush for a two-week period in 1982. He

was also told that he could not appeal any of this until a decision was made either to terminate or to reinstate his wage loss.

The man asked a lawyer to help him with this WCB claim. He was especially concerned about the possibility of fraud charges.

Unaware that the adjudicator was seriously misrepresenting Board policy, the lawyer took the initiative in acquiring the appropriate medical reports, tried to deal with the allegations of fraud that the adjudicator kept repeating, and tried to bring the adjudicator to a decision on the claim. Meanwhile, the man had to rely on welfare to continue supporting his wife and children. In spite of his lawyer's efforts, a year passed with no word on the fraud charges and no decision on the medical information that had been sent to the Board. We intervened at this point on the grounds of unreasonable delay by the adjudicator.

The commissioners accepted that there was unreasonable delay and that the adjudicator was negligent in the performance of his duties. No fraud charges were laid. The adjudicator had never even referred the case for professional investigation, although Board policy required him to.

The man's lawyer ultimately billed him $749.47 for his effort over that year. As the adjudicator's improper actions had necessitated the hiring of a lawyer in the first place, we asked the Board to pay the legal fees.

Although the Board has the discretion to pay such expenses under Section 100 of the Act, its policy to date has been simply never to pay legal fees. The commissioners decided that they were not going to break with tradition in this case. Never to allow an exception to discretionary policy, no matter how compelling the circumstance, would mean that the Board was fettering its discretion and acting in a manner that was contrary to law. Moreover, we felt that such a policy is unjust because it results in the denial of meritorious claims. We pointed out that this case was an exceptional one that merited such an exercise of discretion. The legal fees were reasonably incurred as the result of the negligent and improper action of the Board's own employee. The final word of the commissioners was that while they considered the case to be exceptional, it was not exceptional in a way that justified Board payment of his legal fees.

After the Ombudsman's report to the Legislature, the commissioners decided that, while there should be no change to the Board's general policy of not paying legal fees, there were sufficient extraordinary circumstances in this case to make an exception. The commissioners noted in particular that the claims adjudicator had advised the complainant that he might be prosecuted for fraud, thus introducing an element of the Criminal Justice system into the Workers' Compensation system. The commissioners felt that, while the various factors by themselves would not be sufficient for the Board to make an exception, when they were combined with all the other circumstances of the case, sufficient grounds did exist. The commissioners approved payment of $759.47 representing lawyers fees. (CS86-200)

Workers' Compensation Review Board

In February 1986, the *Workers' Compensation Act* was amended to establish the Workers' Compensation Review Board in place of the boards of review. A new chairman, Bud Gallagher, as well as 35 members to constitute 10 three-member review panels were appointed in February. Recently, four additional vice-chairmen were appointed.

The former Minister of Labour's intention, in increasing the number of panels, was to have appeals resolved in a matter of several weeks as opposed to months or years. We have been advised that the backlog of appeals is beginning to be reduced.

It is recognized that a dramatic increase of personnel to an organization will require a focus on consistency. Ensuring that policies and procedures are in written form and that sufficient training is provided will be an initial concern. We hope that, once these and other goals are achieved, these long-awaited additional resources will be able to eliminate the backlog of appeals within a reasonable period of time.

Inquiries	5
Declined, withdrawn, discontinued	40
Resolved: corrected during investigation	14
Substantiated: rectified after recommendation	1
Substantiated: but not rectified	0
Not substantiated	2
Total number of cases closed	62
Number of cases open December 31, 1986	1

Excessive delay

We received a complaint from a worker regarding excessive delay by the boards of review in deciding her appeal.

A total of 21 months elapsed between the initiation of this woman's appeal and her receipt of the board's decision.

On investigation, we learned that, apart from the basic volume delay which continues to be a problem, there were several other factors which contributed to the delay. Two months elapsed from the time a form letter was mailed to the employer inviting his submission before it was discovered he had not received it. The Board of Review discontinued processing her appeal once the time limit given to the employer had expired. This accounted for a six-month delay in total. Once the appeal was in the hands of the panel, it took another 11 months to be decided.

To help prevent future problems, a form letter was to be sent advising employers who wish to make a submission on an appeal that their submission must be completed within 30 days.

We are also hopeful that the appointment of new panels to the boards of review will speed up the processing of appeals.

Although our investigation did not directly benefit our complainant, we are pleased that we were able to bring to the attention of the boards of review specific causes of delay which are now being rectified. (CS86-201)

Hearing purpose misinterpreted

A fisherman suffered a work accident in 1976 which resulted in injuries to his right rib cage and right wrist. The claim was accepted and he received wage loss benefits for a time plus an on-going pension.

In early 1981, the worker became disabled by tenosynovitis of his finger and thumb and was again awarded wage loss benefits which were subsequently terminated on March 14, 1982. The Board did a further pension assessment but found that there was no further deterioration in his condition than was evident in 1980. Consequently, his pension was not adjusted.

The man appealed two decisions — the original amount of his pension and the decision not to increase it — to a board of review but the appeal was denied. He complained to us that, at the hearing of his pension appeal, the board of review indicated that it would hear the wage loss issue as well, even though no prior warning had been given to him that it would also be heard.

In our study of the review board decision, we found that there was no discussion of the wage loss issue. There was, however, discussion of the level of the worker's functional impairment and an evaluation of his loss of earning capacity as it related to the amount of his pension. In discussing this with the worker, we found he may have misinterpreted the questions from review board members regarding his loss of earning capacity as addressing the wage loss issue. He did not fully understand the two part analysis of permanent partial disability required before any award can be determined. That analysis consists of firstly, calculating the degree of physical impairment and, secondly, determining what loss of earnings the impairment will cause.

We concluded that the board of review did not hear evidence on the loss of wages issue without prior warning to the worker and we were, therefore, unable to substantiate the worker's complaint. In our view, the worker had misunderstood the board's questioning with respect to evaluating his entitlement to a pension as pertaining to wage loss. (CS86-202)

Non-Jurisdictional Complaints

People frequently turn to the Ombudsman for assistance with complaints that are not within the jurisdiction of the office.

A significant number of these enquiries or complaints involve landlord-tenant or employer-employee relationships, financial institutions and personal debt. Often, however, a provincial government agency can be of help and our staff often contact the appropriate office to ask that the complainant be phoned. The cooperation of the staff in these offices has been much appreciated.

Where no government agency can be of service, our staff has developed information for complainants on private agencies and other resources equipped to solve special kinds of problems. In some cases, the complainant can best involve an elected person, such as a Member of Parliament, MLA, municipal councillor, regional district representative or school board member.

Some complaints revolve around the conduct of professional people. Most professional people are required to belong to an association or society in order to practise their profession and that association can review the conduct of its members. The Ombudsman cannot investigate complaints he receives about a review carried out by a professional organization when one of its members is being examined. This jurisdiction is still unproclaimed in the Schedule of Authorities of the Ombudsman Act. However, with one of the organizations, the Law Society of British Columbia, a mechanism whereby a re-examination is made has been developed in cooperation with the Ombudsman.

No assistance necessary or possible	93
Information or referral provided	4,889
Inquiries made: resolution facilitated	764
Total	5,746

The Dilemma between Landord and Tenant

Misunderstandings and difficulties between landlords and tenants continue to be brought to our attention. Disputes often arise because an oral agreement has not been put in writing. This can create problems ranging from disputes over rent relief for work done, payment for labour, parts or goods, or the return of a security deposit even after an inspection is completed by the landlord or manager. These financial disputes can only be settled by going to Small Claims Court, a process which unfortunately may appear to be too difficult, frightening or time-consuming for some people.

Some landlords live in a city far away from the property in which the complainant has lived. Occasionally, our staff will contact a landlord to remind him of his obligation to provide a written statement of the deposit, interest and any charges against the deposit. If he does this, the tenant knows why the landlord is holding back some of the money and, if there is still a dispute, the tenant has the information if he wishes to take action through the court.

Occasionally, the manager of an apartment building will not give the tenant the name and address of the owner to whom legal notice to appear in Small Claims Court must be served. Frustration can lead to confrontation and our staff are often confronted with high emotions.(CS86-203)

The Legal Maze

Legal advice by the Ombudsman is often requested by the public. It is not within our authority to give this. We do, however, have information about some excellent resources in the community. Among these are taped messages played over the telephone (Dial-A-Law), a half-hour of legal advice for $10 (Lawyer Referral Service) or advice about court problems or representation in court for certain defined matters (through the Legal Services Society or Native Court Workers Program).

Occasionally, a person believes that he had been unjustly denied the services of a lawyer through the Legal Services Society and our role is to inform the individual how a review of the facts can be requested. Often, people have not given the proper or pertinent facts required before a decision has been made. (CS86-204)

The Trail of No Return

When a company goes into bankruptcy or receivership, there are creditors with varied status, legal proceedings, court orders and so on. Usually, a chartered accountant who is trained for this type of situation is put in charge of operations. It is often very confusing to the public.

A bankruptcy may mean that a security deposit is no longer available to be returned to the tenant. A person may have put a downpayment on a certain item in a store and it becomes lost in the bankruptcy proceedings. Or a person may have taken a product in for repairs and now that article is being held back from him. Usually, it is not possible to help the individual get the money or goods back. However, our

staff attempts to get information for the bewildered complainant so that he has some details and understanding of the situation.

In one instance, a person bought a motorcycle at a bankruptcy sale and when he went to register it, he needed to have the signature of the previous owner. Our staff facilitated the forwarding of the necessary papers from the trustee of the bankruptcy so the owner could license the motorcycle for the road.(CS86-205)

Gas and Lights, Please

Paying utility bills is a necessary part of the budgeting process for nearly all people. Unfortunately, when circumstances change in a person's life, one is often left with a problem as to how to meet the financial crisis. Roommates in shared accommodation may suddenly depart, leaving personal bills or the agreed share of utilities unpaid. Or getting behind in set monthly payments may set up a negative spiral.

Such crises may be brought on by a sudden loss of income, or unexpected but necessary expenses.

Our office has received many calls from people who have received warning or disconnect notices from utility companies. The reaction may vary from trying to work out the situation, to anger, to ignoring the problem and hoping it may go away. Unfortunately, the last two responses do not solve the problem.

Our office has the authority to investigate B.C. Hydro but there are other electric and gas utility companies in the province over which the Ombudsman has no jurisdiction. Our staff acts as a facilitator to calm the individual and to try to achieve a workable result. Often, the services of the B.C. Utilities Commission are requested and excellent cooperation has been forthcoming.

If a person's total financial outlook is bleak, we often call upon the debt counsellor in the Ministry of Labour and Consumer Services to assist the individual.(CS86-206)

A Little Misinformation Can Be Expensive

A woman who was making arrangements to travel east went to an airline office to make a reservation. She was quoted a price and signed her credit card slip to confirm that she wanted to fly on that date.

Later on, she phoned to confirm her ticket and found that the price quoted originally had been incorrect and a higher cost would now be charged. She said that because of the increase, she could not afford to take the trip and asked that everything be cancelled.

To her astonishment, when she received her next accounting from the credit card company, the original cost of the plane trip had been included. She immediately telephone the airline office and was told to put her complaint in writing. She did this but still did not receive a refund.

After several calls to the airline head office, she became frustrated and called our office. Our staff called the head office supervisor and asked for her assistance. Fortunately, the reservation officer had made a note on the file about what had been promised to the complainant when it was discovered that incorrect information had been given to her. The woman received her full refund plus interest.

This story is an example of a good lesson to remember. Be sure that any refund or service agreed to verbally is confirmed in writing. If the refund offer had not been written on the woman's file, the result might have been quite different.(CS86-207)

Irritation from an Ingrown Toenail

A family holiday to Disneyland had been planned for many months. The decision was made to take out sickness insurance and it proved to be a wise one.

The mother of the family began to experience pain in her foot. She sought medical advice in the United States and found that she needed surgery for an ingrown toenail. This was completed and when they returned to their home in the northwestern part of British Columbia, she made a claim on her insurance.

Five months later, she phoned our office and complained that she had received no reimbursement from the company. One of our staff pursued the matter and found out that the original carrier insurance had amalgamated with another and that she had been corresponding and telephoning to the wrong company. No one had told her.

Her application was finally found in a huge box of tranferred claims and the company promised quick action. Within a week, the woman had received her cheque for $900, full reimbursement for her claim.(CS86-208)

Indian Rights to Health Care Coverage

A woman from the northern part of British Columbia wrote to ask for assistance. She was recently reinstated as an Indian under the newly-proclaimed changes to the federal Indian Act and wanted to know what rights she and her family had to medical care. One of her sons had been billed several times by the local hospital for lab work ordered by his doctor and which it said was not covered by Health and Welfare Canada.

Our staff phoned a representative of Health and Welfare Canada in the regional office and confirmed that the tests were covered by the federal agency.

A representative of Health and Welfare Canada phoned the hospital to discuss the young man's outstanding bill and to point out the coverage provided by her Department. The bill for the lab work was immediately paid by the proper plan and through the information conveyed by our office, the family was aware of the medical coverage it would rightfully receive.(CS86-209)

Information Relieves Stress

An older woman who lived alone phoned to the Ombudsman because she had been admitted to a psychiatric ward at a hospital. She had recently moved into another community and was concerned about the personal effects she had with her when she was committed.

Our staff was concerned about two things in particular: Whether she had been properly committed and the whereabouts of all of her possessions.

Professional people who were involved with the woman, such as the RCMP and the head nurse at the hospital, were contacted by our office and it was determined that the woman had been properly certified to be committed by two doctors. It was also found that her personal effects which she had when she was admitted were safely locked in storage at the hospital. Through the RCMP, it was learned that her other belongings were in a motel and the owner agreed to store them at no cost to the woman.

This information was conveyed to the woman and she was most grateful to everyone who had assisted her.(CS86-210)

Cooperation Wins the Game

A number of young people from an Indian Band in northern British Columbia were going to a hockey tournament in a city some distance away. All the arrangements had been made for acommodation at a local hotel. Two days before the tournament, a team manager was informed by the hotel that the group that had been meeting there had not completed its agenda and would be staying on during the time the hockey players needed the beds.

An RCMP detachment which had a team playing in the tournament was contacted by a Band member as was our office. Acting as facilitators, our staff and the RCMP resolved the problem, with the cooperation of hotel staff, the group which wanted all the rooms at the hotel and the hockey team. A system of sharing rooms was devised so that all had a place to stay and the tournament could go on as planned.(CS86-211)

Bus storage payment

A man had two suitcases filled with his belongings stored in a locker at the Greyhound bus station for 26 days. Greyhound threatened to seize the goods for non-payment of the storage fee. The man had been given a cheque for partial payment by the Ministry of Social Services and Housing, but Greyhound refused to accept the cheque.

When this man complained to us, we contacted the terminal manager who said that this is a recurring problem for Greyhound. However, he was willing to close the debt and return the man's property if he paid half the bill in cash. If the man was unable to do this, the terminal manager was willing to negotiate a payment arrangement.(CS86-212)

Company in the 'hole'

An inmate of a federal corrections facility complained to us about being placed in the 'hole' with another inmate. Being placed in the 'hole' means being locked up in a cell with limited room for all but one hour per day. The inmate felt he would break down psychologically if put in that situation with another inmate. Apparently, his cell mate was of the same opinion. The complainant had started a hunger strike and both the inmates were threatening to harm themselves. They had been told the double-bunking was necessary because of over-crowding.

We contacted the warden's office to let him know about the problem. Correctional personnel stated that they were puzzled by the complaint as the two inmates had requested, in writing, that they be placed together. However, they were put into separate cells later the same day.(CS86-213)

Inaccurate phone information

An Ombudsman officer became involved in investigating an individual's term of prohibition from driving, since it appeared to involved the Motor Vehicle Department. While investigating, the officer had occasion to listen to a 'Dial-a-Law' taped telephone message produced by the Canadian Bar Association on the offence of driving while prohibited and noted the telephone message contained inaccurate information. She contacted the CBA to discuss her concerns.

One of the errors was of a minor nature. The tape referred to a $25 fee payable upon the accumulation of 10 penalty points when, in fact, this regulation had recently been repealed.

Another inaccuracy was of a more serious nature.

The script of the tape implied there was no defence to a charge of driving while prohibited. The tape stated that, to obtain a conviction, the prosecutor need only demonstrate that an individual had been driving and that he or she was prohibited from driving at the time.

The true state of the law on this issue is that an honest mistake in belief about the fact of the prohibition is a good defence to the charge.

Some time later, our office received a copy of the revised script for the 'Dial-a-Law' tape on driving while prohibited. The script now provides a more complete explanation and adds important qualifications to the information previously provided. (CS86-214)

Limits on UI recovery

A man was without funds because his full unemployment insurance benefits were being recaptured by the Canada Employment and Immigration Commission (CEIC). The federal agency was recovering a $1,200 overpayment received in another province by this unemployed worker.

The man requested income assistance and was turned down by the Ministry of Human Resources because he was eligible for UI. The district supervisor for that office instructed the complainant to contact us so that we might make enquiries with CEIC. The Ombudsman has no jurisdiction with respect to federal authorities. Neither has the Ministry of Human Resources, but the MHR supervisor thought we might be perceived as having some clout in this case.

It is CEIC policy that the rate of recapture of unemployment insurance overpayments may be negotiated with the client, and that no more than 50 per cent of each current entitlement is withheld to apply to the debt. In this case, the local CEIC office worker had not operated according to policy. We informed the regional headquarters of CEIC so they could remind all of their offices of this, and also suggested to the Ministry that it clarify this practice so that front-line staff will understand more clearly how unemployment insurance payments can be recaptured.

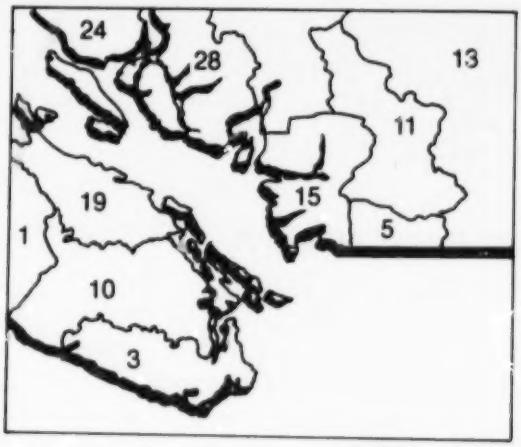
In this man's case, UIC arranged to recapture 20 per cent of each cheque and the Ministry provided him food vouchers to assist him until his first partial UIC cheque arrived.(CS86-215)

Part III
Statistics

TABLE 1
Profile of Complainants and Complaints
Closed Between January 1, 1986 and December 31, 1986

	Number	Percent
Mode of First Contact		
In Person	1,018	9.1
Letter	611	5.4
Telephone	9,504	85.0
Not Applicable	52	.5
TOTAL	11,185	100.0
Initiator Type		
Aggrieved Party	10,425	93.3
Relative/Friend	513	4.6
MLA & MP	34	.3
Professional	122	1.1
Ombudsman	46	.5
Public Servant	23	.1
Other	22	.1
TOTAL	11,185	100.0
Initiated At		
Victoria	7,215	64.5
Vancouver	3,392	30.3
Local Visit	500	4.5
Other	78	.7
TOTAL	11,185	100.0

TABLE 2
Percentage of Complaints Closed by Regional District as of December 31, 1986

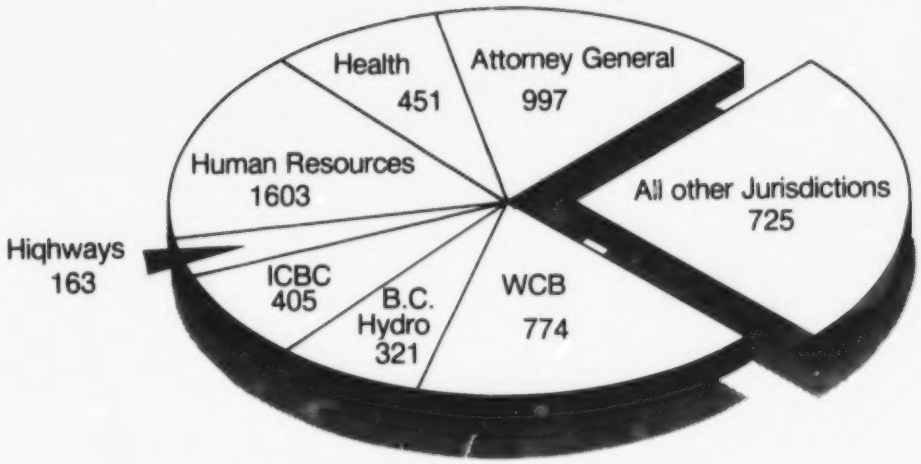


Regional District	Percentage of population 1981	Percentage of complaints 1986
1. Alberni-Clayoquot	1.2	1.0
2. Bulkley-Nechako	1.4	1.1
3. Capital Region	9.1	17.1
4. Cariboo	2.2	2.4
5. Central Fraser Valley	4.2	6.3
6. Central Kootenay	1.9	3.2
7. Central Okanagan	3.1	3.0
8. Columbia-Shuswap	1.5	1.2
9. Comox-Strathcona	2.5	2.7
10. Cowichan Valley	1.9	0.8
11. Dewdney-Alouette	2.2	2.1
12. East Kootenay	2.0	2.2
13. Fraser-Cheam	2.0	1.0
14. Fraser-Fort George	3.3	5.0
15. Greater Vancouver	42.6	27.0
16. Kitimat-Stikine	1.5	2.0
17. Kootenay Boundary	1.2	1.0
18. Mount Waddington	0.5	0.5
19. Nanaimo	2.8	4.2
20. North Okanaga	2.0	2.3
21. Central Coast	0.1	0.2
22. Okanagan-Similkameen	2.1	1.7
23. Peace-Liard	2.0	3.7
24. Powell River	0.7	0.6
25. Skeena-Queen Charlotte	0.9	0.7
26. Squamish-Lillooet	0.7	0.8
28. Stikine Region (Unincorporated)	0.1	0.4
29. Sunshine Coast	0.6	0.4
29. Thompson-Nicola	3.7	4.2
Out of Province		1.2
Total	100.0	100.0

TABLE 3
Disposition of Complaints (Proclaimed Authorities)
Closed between January 1986 and December 1986.

	Substantiated Corrected after Recommendation	Substantiated but Not Rectified	Resolved Corrected during Investigation	Not Substantiated	Declined Withdrawn Discontin.	Inquiry	Total
A. MINISTRIES:							
Agriculture & Food			1	4	3	1	9
Attorney General	6		380	286	289	36	997
Consumer & Corp.			13	24	33	3	73
Education			2	5	3	3	13
Energy, Mines				6			6
Environment			12	34	26	2	74
Finance			14	19	7	5	45
Forests		1	8	16	10	1	36
Health	2		130	122	166	31	451
Human Resources	2		660	311	386	244	1603
Industry & Sm. Bus				1	2		3
Labour	1		10	22	34	2	69
Boards of Review	1		14	2	40	5	62
Intnl Trade					3		3
Lands, Parks & Housing			6	13	6	1	26
Municipal Affairs			5	18	7	1	31
Post Sec. Ed.			7	4	4	2	17
Provincial Secretary			11	14	10	5	40
T. & Highways	1		43	74	39	6	163
Tourism				2			2
SUB-TOTAL	13	1	1316	977	1068	348	3723
Per Cent	.3	.1	35.3	26.3	28.7	9.3	100
B. BOARDS, COMMISSIONS:							
Agricultural Land Comm.			3	1			4
B.C. Assessment			5	7	10		22
B.C. Board of Parole			1	4		2	7
B.C.B.C.			3	1	2		6
B.C.D.C.					1		1
B.C. Ferry Corp.			3	1	1		5
B.C.H.M.C.			7	6	6		19
B.C. Hydro			167	47	95	12	321
B.C. Systems					25		25
B.C. Railway					5		5
B.C. Steamships					3		3
B.C. Transit			2	5	4	1	12
Colleges			6	1	9		16
Criminal Injuries			3	1	7	2	13
Environmental A. Brd.						2	2
EXPO				3	1		4
Hospital Boards			8	3	4	1	16
I.C.B.C.			138	32	197	38	405
Labour Rel. Board			3	9	6	2	20
Motor Carrier Comm.			2		2		4
Municipal Police Brds.					10	1	11
W.C.B.	18	24	127	77	474	54	774
Others	4		4	3	6	4	21
TOTAL	22	24	482	201	868	119	1716
Percent	1.3	1.4	28.1	11.7	50.6	6.9	100
Totals A & B	35	25	1798	1178	1936	467	5439
Percent	.6	.5	33.1	21.7	35.6	8.5	100

Disposition of Complaints, Proclaimed Authorities, 1986



Total: 5,439 Complaints

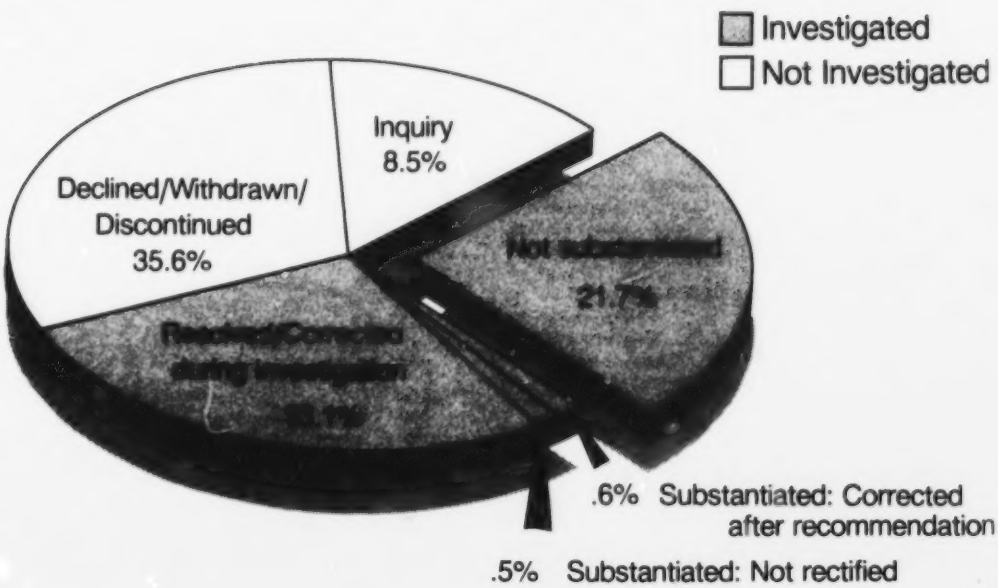


TABLE 4
Extent of Service
Complaints Against Unproclaimed Authorities
Sections 3-11, Schedule to Ombudsman Act
Closed between January 1, 1986 and December 31, 1986

	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Government Corporations	1			1
Municipalities	3	144	8	155
Regional Districts	2	46	3	51
Public Schools		58	6	64
Universities	2	4	1	7
Colleges & Provincial Institutes		2		2
Hospital Boards	2	14	5	21
Professional and Occupational Associations	3	6	3	12
Islands Trust		1		1
TOTAL	13	275	26	314
Percent	4%	88%	8%	100%

TABLE 5
Extent of Service
Non-Jurisdictional Complaints
Closed between January 1, 1986 and December 31, 1986

	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Federal, other provincial territorial & foreign governments	6	641	28	675
Marketplace matters- requests for personal assistance	54	3,177	653	3,884
Professionals actions	8	222	12	242
Legal & Court matters	6	296	18	320
Police Matters	1	95	8	104
Statutory Boards		17	1	18
Miscellaneous	5	166	18	189
TOTAL	80	4,614	738	5,432
Percent	1%	85%	14%	100%

TABLE 6
Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
0. Inquiries		467	19.4
1. No Jurisdiction		13	.5
2. Abandoned by Complainant		159	6.7
3. Withdrawn by Complainant		306	12.8
4. Statutory Appeal		262	10.9
5. Solicitor		1	.0
6. Discontinued by Ombudsman		1,195	49.7
a) Over 1 year old	2		
b) Insufficient personal interest	7		
c) Other available remedy	751		
d) Frivolous	3		
e) Investigation unnecessary	211		
f) Investigation not beneficial	221		
TOTAL:		2,403	100%

TABLE 7
Level of Impact
Resolved and Rectified (Jurisdictional) Complaints
Closed Between January and December 1986

	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	1,575	171	49	2	1	1,798
Rectified Complaints	13	7	12		3	35
TOTAL:	1,588	178	61	2	4	1,833

TABLE 8
Budget Estimates

Year	Salaries	Operating Expenses	Total
1980/81	$ 631,203	$ 387,000	$ 1,018,203
1981/82	955,405	504,720	1,460,125
1982/83	1,251,497	508,843	1,760,350
1983/84	1,110,744	508,000	1,618,744
1984/85	1,144,295	793,725	1,938,020
1985/86	1,263,259	767,897	2,031,156
1986/87	1,531,555	864,529	2,396,084

TABLE 9
List of Reports

Year	Cabinet Reports (Section 24)	Special Reports (to the Legislature) (Section 2)	Public Reports (Section 30(2))
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
TOTALS	28	15	4

TABLE 10
Number of Complaints/Inquiries Closed for Selected Ministries, Boards, Commissions, Etc.

	1982	1983	1984	1985	1986
Human Resources	599	984	1,369	1,820	1,603
I.C.B.C.	791	810	499	424	405
Workers' Compensation	440	482	641	737	773
Attorney General	419	428	988	831	997
Consumer & Corp. Affairs	346	213	103	61	73
Transportation & Highways	220	263	285	249	163
Health	163	209	301	569	451
Lands, Parks & Housing	139	163	131	88	26
B.C. Hydro & Power	135	159	212	365	321

TABLE 11
Closed Complaints by Jurisdiction and Year

Year	Total Complaints Closed	Number Outside Jurisdiction	Number Within Jurisdiction	Percent Within Jurisdiction
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6

TABLE 12
Disposition of Jurisdictional Complaints
1979-1986: Numbers of Complaints Closed

	79/80	1981	1982	1983	1984	1985	1986
Substantiated but Not rectified	0	74	18	20	51	29	25
Substantiated and Rectified	59	180	135	139	148	246	35
Resolved	506	601	1,169	1,417	1,905	2,021	1,798
Not substantiated	459	682	880	1,123	1,264	1,245	1,178
Discontinued	864	1,220	1,926	1,907	2,339	2,293	1,936
Inquiries							467
TOTAL	1,888	2,757	4,128	4,606	5,707	5,834	5,439

TABLE 13
Disposition of Jurisdictional Complaints
1979-1986: Percentages

	79/80	1981	1982	1983	1984	1985	1986
Substantiated but Not rectified	0	3	1	1	1	1	.4
Substantiated and Rectified	3	7	3	3	3	4	.6
Resolved	27	22	28	31	33	35	33.0
Not substantiated	24	25	21	24	22	21	22.0
Discontinued	46	44	47	41	41	39	36.0
Inquiries							8.0

TABLE 14
Complaints/Inquiries Received and Closed

Year	New Complaints Received	Percent Increase/Decrease Over Previous Year	Complaints Closed	Percent Increase/Decrease Over Previous Year
1979	924		256	
1980	3,840		3,941	
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
79-86	61,194		61,249	

TABLE 15
1986 Complaint/Inquiry Load

1979-1985 Complaints carried into 1986	1,098
New complaints received in 1986	11,012
Total active complaints in 1986	12,134
Complaints closed in 1986	11,185
Complaints still under investigation at Year ending December 31, 1986	949

Staff as at December 31, 1986

Amren, R.W. Bergen
Anderson, Patricia (Pat)
Andison, Alan
Bell, Glen
Berry, Susan P.
Beyer, L. Eleonore
Bohlin, Ronald H.
Britneff, Elizabeth (Libby)
Brown, Cleta
Culver, Mary Elizabeth
Davis, David
Dennison, Sid
Diersch, Eileen
Dixon, Lorraine A.
Gardiner, Thomas (Scotty) M.
Gelfand, Michelle J.
Hadley, Sonja E.
Hallam, Karen M.
Hamilton, Angela B.
Hayward, Dorothy
Henders, Keith C.
Heyman, Susan L.
Hughes, Helen
Humphreys, Barbara G.
Illington, Joy
Kenneny, Carol
Labrick, Elisabeth
Madison, Christine
Owen, Stephen
Parfitt, D. Brent
Phillips, R. Delmar (Del)
Ross, Michael
Schaufele, Irita
Scott, Elizabeth (Liz)
Spargelo, Cindy
Summersgill, William (Bill) M.
Switzer, Jannice
Tweddle, Rita
Williams, Holly E.
Wong, Georgina

Part IV
The Ombudsman Act

OMBUDSMAN ACT

[Provisions of Schedule not in force]

CHAPTER 306

[Act administered by the Ministry of Attorney General] [Consolidated January 20, 1984.]

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2)

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4)

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary of a Supreme Court judge.

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6)

Pension

5. (1) Subject to this section, the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section

(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service; and

(b) the number of years referred to in section 19 (1) (b) of the *Pension (Public Service) Act* shall be multiplied by 1.5.

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act.*

1977-58-2(7 to 11); 1985-14-4

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary; or

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until

(d) the appointment of a new Ombudsman under section 2;

(e) the end of the period of suspension of the Ombudsman;

(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or

(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or

(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4

Staff

8. (1) The Ombudsman may, in accordance with the *Public Service Act*, appoint employees necessary to enable him to perform his duties.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) Repealed.

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;

(b) prosecute an offence under this Act; or

(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;

(b) no appeal lies in respect of it; or

(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and

(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities and the universities council as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83).

20/1/84

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